CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1908

No. 454

JAY B. PHELPS, APPELLANT,

vs.

BOARD OF EDUCATION OF THE TOWN OF WEST NEW YORK AND STATE BOARD OF EDUCATION OF THE STATE OF NEW JERSEY

No. 455

LUCY ASKAM ET AL., APPELLANTS,

vs.

BOARD OF EDUCATION OF THE TOWN OF WEST NEW YORK AND STATE BOARD OF EDUCATION OF THE STATE OF NEW JERSEY

APPEALS FROM THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY

FILED [illegible], 1908.

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IN SUPREME COURT OF NEW JERSEY

[Seal of the Court]

WRIT OF CERTIORARI

NEW JERSEY, ss:

The State of New Jersey to the Board of Education of the Town of West New New York and the State Board of Education, Greeting:

We being willing for certain reasons to be certified of a decision made on February 9, 1935 by the State Board of Education of the State of New Jersey on an appeal to said State Board of Education from a decision of the Commissioner of Education of the State of New Jersey, dated July 18, 1934, in the matter of Jay B. Phelps, appellant, and Board of Education of the Town of West New York, respondent; do command you that the said decision, together with all things touching and concerning the same, as fully and entirely as before you they remain, to our Justices of our Supreme Court of Judicature at Trenton, on the 7th day of May, 1935, you certify and send, together with this writ; that therein may be done what of right and according to the laws of this State should be done.

Witness, Thomas J. Brogan, Esquire, Chief Justice of our Supreme Court, at Trenton, this 23rd day of April, 1935.

Fred L. Bloodgood, Clerk. McCarter & English, Attorneys.

I allow this writ. Let it be sealed.

Dated April 22, 1935.

Charles W. Parker, J S. C.

[fol. 3] STATE OF NEW JERSEY; DEPARTMENT OF PUBLIC INSTRUCTION

JAY B. PHELPS, Appellant,

vs.

BOARD OF EDUCATION OF THE TOWN OF WEST NEW YORK, Respondent

PETITION OF APPEAL

Jay B. Phelps, the above named appellant, hereby petitions the Commissioner of Education of the State of New Jersey to review and set aside the resolution adopted by the Board of Education of the Town of West New York on June 23, 1933, by which resolution the salary of the appellant was reduced from $3200.00 annually to $2784.00 for the period between July 1, 1933 and July 1, 1934. A true copy of said resolution is hereto annexed as Schedule A. The appellant sets forth that said resolution was unlawfully adopted and is illegal and says that:

1. By contract dated May 4, 1921 appellant was employed to teach in the public schools of the Town of West New York for a period of one year, beginning September 1, 1921. Said contract provided for a salary of $2300 to be paid to appellant in twelve equal monthly installments.

2. Appellant has been continuously engaged as a teacher in the public schools of the Town of West New York during all school years since the school year 1921-1922, having [fol. 4] taught in said schools from September 1921 until the present time. For the school year 1922-1923 the contract of appellant to teach in the public schools of West New York was renewed and the salary of appellant increased to $2450 per annum. For the school year 1923-1924 said contract was again renewed and the salary of appellant was increased to $2600 annually. For the school year 1924-1925 said contract was again renewed and the salary of appellant was increased to $2750. Since the school year 1924-1925 the contract of appellant to teach in the public schools of West New York has continued in full force and effect and for the school year 1925-1926 the salary of appellant was raised to $2900; for the school year 1926-1927 the salary of appellant was raised to $3050, for

the school year 1927-1928 the salary of appellant was raised to $3200 and for the school year 1928-1929 the salary of appellant was fixed at $3200.00. The said salary of appellant remained fixed at the sum of $3200 for the school years 1929-1930, 1930-1931, 1931-1932 and 1932-1933.

3. Appellant has been engaged as a teacher in the public schools of the Town of West New York for a period of more than three consecutive years and no written charges have ever been preferred against appellant and appellant has not been charged with or been guilty of inefficiency, incapacity, conduct unbecoming a teacher or other offenses constituting just cause for the reduction of his salary or the termination of his employment.

4. The aforesaid resolution of the Board of Education of the Town of West New York dated June 23, 1933, purports to reduce the salary of appellant by 13% per annum [fol. 5] for the school year 1933-1934. Appellant alleges and shows that said resolution is in violation of the provisions of an act entitled "An Act to establish a thorough and efficient system of free public schools and to provide for the maintenance, support and management thereof," approved October 19, 1903, and the several amendments thereof and supplements thereto, in that, among other things, appellant is entitled to retain his employment under tenure without diminution or reduction of salary or compensation. Appellant further alleges and shows that said resolution is an illegal and improper interference with the terms of his said contract of employment and is without force and effect as a modification of said contract.

5. Appellant is informed and believes that said resolution dated June 23, 1933 was adopted by the Board of Education of the Town of West New York in reliance on "An Act respecting the salaries or compensation of officers and employees of and persons holding positions in the several school districts of this State," approved February 4, 1933. Appellant alleges and shows that said Act is unconstitutional and without force and effect insofar as it purports to authorize a reduction of the salary of appellant without regard to the tenure protecting the appellant and without regard to the contract of employment under which the appellant has served and is serving as a teacher in the public schools of West New York.

6. Appellant further alleges and shows that said resolution dated June 23, 1933 does not comply with the provisions of said Act approved February 4, 1933 in that said resolution discriminates among and between individuals in the same class of service, and said Board of Education in [fol. 6] applying said resolution has discriminated among and between individuals in the same class of service.

7. Since the passage of said resolution dated June 23, 1933 appellant has accepted no compensation for the school year 1933-1934 for the performance of his duties as a teacher in the public schools of West New York, and appellant has not agreed expressly or impliedly to the terms of said resolution dated June 23, 1933 nor to the manner in which said resolution has been applied by the Board of Education of the Town of West New York.

Appellant therefore prays that an order may be made by the Commissioner of Education of the State of New Jersey setting aside and declaring invalid the action of the Board of Education of the Town of West New York in attempting to reduce the compensation of appellant from $3200 to $2784 for the school year 1933-1934, which action of said Board of Education is embodied in its resolution dated June 23, 1933. And appellant prays for such other relief as may be necessary and proper in the premises.

McCarter & English, Attorneys of Appellant.

[fol. 7] SCHEDULE "A" TO PETITION

Resolved, That between July 1, 1933, and July 1, 1934, the salaries of the superintendent of schools and of all principals, supervisors and teachers in the West New York School system be and they are hereby reduced as follows:

All salaries from $1200 to $1999 per annum reduced ten per cent;

All salaries from $2000 to $2499 per annum reduced eleven per cent;

All salaries from $2500 to $2999 per annum reduced twelve per cent;

All salaries from $3000 to $3499 per annum reduced thirteen per cent;

All salaries from $3500 to $3999 per annum reduced fourteen per cent;

All salaries from $4000 to $5600 per annum reduced fifteen per cent;

all figures being inclusive; provided, however, that the salary of any elementary school teacher shall not be reduced below the minimum of $1200 per annum, and the salary of any high school teacher shall not be reduced below the minimum of $1600 per annum.

(Sgd.) Arthur H. Einbeck.

Dated June 23, 1933.

[fols. 8-9] *Duly sworn to by Jay B. Phelps. Jurat omitted in printing.*

[fol. 10] STATE OF NEW JERSEY; DEPARTMENT OF PUBLIC INSTRUCTION

JAY B. PHELPS, Appellant,

vs.

BOARD OF EDUCATION OF THE TOWN OF WEST NEW YORK, Respondent

ANSWER—Filed January 15, 1934

The Board of Education of the Town of West New York for answer to the petition of Jay B. Phelps, respectfully says:

1. It admits the allegations contained in paragraph 1 of the petition, except as to the manner in which the salary was to be paid, but as this feature is irrelevant to the questions presented for adjudication, proof thereof is hereby waived.

2. It admits the allegations contained in paragraphs 2, 3, and 7 of the petition.

3. It admits the allegation contained in the first sentence of paragraph 4 of the petition, but denies the balance of the allegations contained in said paragraph.

4. It admits the allegation contained in the first sentence of paragraph 5 of the petition, but denies the balance of the allegations contained in said paragraph.

[fols. 11-12] 5. It denies the allegations contained in paragraph 6 of the petition.

Respondent therefore prays that the petition be dismissed.

The Board of Education of the Town of West New York in the County of Hudson, by Reinhold Hekeler, Its Attorney.

Duly sworn to by Leo V. Roth. Jurat omitted in printing.

[fols. 13-14] STATE OF NEW JERSEY; DEPARTMENT OF PUBLIC INSTRUCTION

JAY B. PHELPS, Appellant,

vs.

BOARD OF EDUCATION OF THE TOWN OF WEST NEW YORK, Respondent

STIPULATION OF FACTS—Filed May 12, 1934

It is hereby stipulated by and between the respective parties to the above entitled cause that said cause be submitted for determination upon such facts contained in the petition of appeal as are admitted by the answer of the respondent to said petition and upon the additional facts stated in the following paragraphs:

1. The following list shows the names of all persons holding New Jersey teaching certificates who are employed in the West New York School system. Said list also shows, for each of the persons named, the type of certificate held, the original date of appointment in the West New York school system, initial salary, approximate number of years of service, the salary for the school year 1932-1933, and the salary for the school year 1933-1934:

High School

Name	Certificate	Date of Appointment	Initial Salary	Approximate Yrs. of Service	Salary 1932-1933	Salary 1933-1934
Carlos Woodworth	Perm Supv. & Sec.	Aug. 1917	$1,900	16½	$5,000	$4,250.00
Elizabeth Borneman	Perm. Sec.	Feb. 1916	800	18	3,900	3,354.00
Lucy Askam	" "	Sept. 1918	1,200	15½	3,200	2,784.00
Anne Bollenbacher	" "	Sept. 1927	1,200	6½	1,875	1,687.50
Louis Brenner	Limited Spec. Com'l. Ed.	Sept. 1933	1,600	½		1,600.00
Leonard Burns	Perm. Man. Tr.	Sept. 1925	1,750	8½	2,650	2,332.00
Edward Carroll	(Phys. Tr.) Perm.	Sept. 1919	1,800	14½	3,400	2,958.00
Elvira Chricosta	" Sec.	Sept. 1923	1,900	10½	3,100	2,697.00
Helen Clohosy	" "	Sept. 1922	1,950	11½	3,200	2,784.00
Genevieve Creighton	" "	Sept. 1923	1,600	10½	2,825	2,486.00
Alice DeBros	Limited Sec.	Feb. 1931	1,600	3	1,675	1,600.00
Bertha DeLaney	Perm. Sec.	Feb. 1926	1,250	7½	1,800	1,620.00
Marguerite Dolan	" "	Feb. 1929	1,600	5	1,975	1,777.50
Viola Donovan	Perm. Stenog., Type, Bkkeep.	Sept. 1923	1,775	19½	2,875	2,530.00
Marie DuBois	Limited Sec.	Sept. 1933	1,600	½		1,600.00
Ida Egan	Perm. Sec.	Sept. 1928	1,750	5½	2,200	1,958.00
Walter Eickmann	" "	Sept. 1928	1,600	5½	2,075	1,846.75
Florence Eldred	Perm. Spec. Drawing	Sept. 1922	1,600	11½	3,050	2,653.50
Willis Eshleman	Perm. Sec.	Sept. 1920	2,000	13½	3,400	2,958.00
Marie Manda Felitti	" "	Sept. 1922	1,300	11½	2,750	2,420.00
Henry Fink	Limited Spec. Art	Feb. 1932	1,600	2	1,600	1,600.00
DeWitt Fisher	Perm. Sec.	Nov. 1921	2,100	12 2/10	3,200	2,784.00

High School—Continued

Name	Certificate	Date of Appointment	Initial Salary	Approx-mate Yrs. of Service	Salary 1932-1933	Salary 1933-1934
	Mech. Draw.					
Zabelle Gabriel	Perm. Sec.	Sept. 1923	1,400	10½	2,750	2,420.00
Louis Gerisch	" "	Sept. 1929	1,600	4½	1,900	1,710.00
Bertha Godfrey	" "	Sept. 1920	1,750	13½	3,400	2,958.00
Fannie B. Godlin	" "	Sept. 1927	1,400	6½	2,050	1,824.50
Abe Golden	Perm. Sec.	Sept. 1920	1,600	13½	3,200	2,784.00
Alice Halfpenny	" "	Sept. 1924	1,400	9½	2,525	2,222.00
Esther Hanna	Perm. Sec. & Type, Stenog.	Sept. 1918	1,000	15½	3,400	2,958.00
Kenneth Hart	Perm. Sec.	Jan. 1922	2,200	12	3,200	2,784.00
Emma Hubert	" "	Feb. 1921	1,850	13	3,400	2,958.00
Reintrant E. Jonsson	" "	Sept. 1924	1,600	9½	2,750	2,420.00
Carl Kauffman	Perm. Man. Tr. Shopwork	Sept. 1920	2,100	13½	3,400	2,958.00
Herman Krause	Perm. Sec.	Sept. 1919	1,600	14½	3,400	2,958.00
Rose Millimet	Perm. Elem.	Sept. 1915	560	18½	2,300	1,600.00
Nicholas LeRose	Perm. Com'l.	Sept. 1930	1,600	3½	1,750	1,600.00
Nicholas Lessner	Perm. Sec.	Sept. 1925	1,600	8½	2,600	2,288.00
Alice Luckings	" "	Sept. 1921	1,900	12½	3,400	2,958.00
John McGrath	" "	Feb. 1928	1,600	6	2,125	1,891.25
Vincent McGuinness	" "	Sept. 1924	2,050	9½	2,975	2,618.00
Gerald McInerney	Man. Tr.	Oct. 1923	1,900	10½	3,200	2,784.00
Ruth Meinzer	Perm. Sec.	Feb. 1931	1,600	3	1,675	1,600.00
Blanche Miller	" "	Feb. 1929	1,675	5	2,050	1,824.50
John Moorhead	Limited Sec.	Sept. 1933	1,600	½		1,600.00
Edna Moreau	Perm. Sec.	Sept. 1923	1,400	10½	2,775	2,442.00

Cornelius O'Connor	" "	Sept. 1924	1,600	9½	2,700	2,376.00
Alice Palmer	" "	Sept. 1929	1,600	4½	1,900	1,710.00
Jay B. Phelps	" "	Sept. 1921	2,300	12½	3,200	2,784.00
[fol. 16]						
Gertrude Reiley	Perm. Spec. Phys. Tr.	Sept. 1921	$1,350	12½	$3,025	$2,631.75
Nathan Richman	Perm. Sec.	Sept. 1933	1,600	½		1,600.00
Mary Robinson	" "	Feb. 1921	1,750	13	3,200	2,784.00
Robert H. Rollins	" "	Sept. 1926	2,200	7½	2,950	2,596.00
Thomas Roop	" "	Feb. 1922	2,200	12	3,200	2,784.00
Mary Ross	Perm. Sec.	Feb. 1922	2,100	11	3,400	2,958.00
Lillian Schlesinger	Limited Spec. Stenog., Type.	Sept. 1930	1,600	3½	1,750	1,600.00
Peter Scottong	Perm. Sec.	Feb. 1923	1,800	11	3,175	2,762.25
Edna Stone	Perm. Sec. Drawing	Feb. 1921	1,800	8	3,400	2,958.00
Gilbert Wagner	Perm. Sec.	Sept. 1921	2,300	16	3,200	2,784.00
John White	Perm. Sec.	Sept. 1929	1,600	4½	1,900	1,710.00
Bernice Young	" "	Feb. 1929	1,600	5	1,975	1,777.50
		School No. 1				
Becker, Inez A.	2nd State	Apr. 1915	700	18¾	2,500	2,200.00
Bergen, Rose E.	Perm. Elem.	Sept. 1922	1,400	12½	2,425	2,158.25
Bruggemann, Dorothy	Perm. Elem.	Sept. 1933	1,200	½		1,200.00
Buonaccorsi, Jennie	Perm. Elem.	Sept. 1923	1,200	11½	2,075	1,846.75
Chase, Mary E.	Per. Music Supervisors	Sept. 1926	1,800	7½	2,300	2,047.00
Dankert, Minnie E.	Perm. Elem.	Feb. 1918	700	15½	2,500	2,200.00

School No. 1—Continued

Name	Certificate	Date of Appointment	Initial Salary	Approximate Yrs. of Service	Salary 1932-1933	Salary 1933-1934
Drenkard, Adele	Perm. Spec. Dom. Sci.	Sept. 1927	1,400	6½	1,800	1,620.00
Eckardt, Elsie H.	Perm. Elem.	Sept. 1923	1,200	10½	2,025	1,802.25
Ekegren, Esther	Per. Kg. Primary	Sept. 1923	1,200	10½	1,950	1,755.00
Forbes, Ida B.	2nd State	Sept. 1905	510	28½	2,500	2,200.00
Freedman, Mary	Perm. Elem.	Sept. 1924	1,200	9½	2,025	1,802.25
Ginsburg, Rose	Perm. Elem.	Sept. 1921	1,500	12½	2,300	2,047.00
Girsham, Mae H.	Perm. Elem.	Sept. 1920	1,350	13½	2,300	2,047.00
Gleason, Gertrude A.	Perm. Phys. Tr.	Sept. 1928	1,700	5½	2,025	1,802.25
Grossman, Olga	Perm. Elem.	Feb. 1926	1,400	8	2,075	1,846.75
Hangley, Frances	Perm. Elem.	Sept. 1918	700	15½	2,300	2,047.00
Hodkin, Anne	Perm. Elem.	Sept. 1924	1,250	9½	2,025	1,802.25
Kaelin, Tillie	" "	Sept. 1922	1,400	11½	2,100	1,780.00
Klees, Evelyn	" "	Nov. 1919	800	14¼	2,200	1,958.00
Lev, Tillie	" "	Sept. 1925	1,200	8½	1,900	1,710.00
Litzenberg, Samuel R.	Sp. Shop Work	Sept. 1926	1,700	7½	2,525	2,222.00
Logan, Jennie M.	Perm. Elem.	Apr. 1919	800	14 5/6	2,300	2,047.00
Logioio, Josephine	Perm. Elem.	Feb. 1922	1,200	12	2,075	1,846.75
Lundell, Audrey	" "	Feb. 1922	1,200	11½	2,250	2,002.50
MacEwan, Harriet	Per. Kg. Prim.	Feb. 1916	635	18	2,475	2,202.75
Marinovich, Cath.	Perm. Elem.	Mar. 1927	1,200	6½	1,715	1,543.50
Meyers, Maude	" "	Sept. 1922	1,200	11½	2,225	1,980.25
McArdle, Margaret	" "	Sept. 1921	1,550	12½	2,500	2,200.00
McDermott, Agnes	" "	June 1923	1,200	10½	2,125	1,891.25
Michaels, Dorothy L.	Per. 2nd	Sept. 1923	1,200	10½	2,150	1,913.50
O'Keefe, Kathryn E.	Perm. Elem.	Dec. 1907	480	26½	2,500	2,200.00

Rafter, A. Maud	3rd Gr. State	Feb.	1914	750	20	2,500	2,200.00
Rank, Lillian M.	Perm. Elem.	Sept.	1920	1,100	13½	2,300	2,047.00
Reiley, Alysse	" "	Sept.	1919	800	14½	2,375	2,113.75
Reineman, Gertrude	" "	Sept.	1924	1,200	8	1,950	1,755.00
Rice, Ethel	" "	Sept.	1933	1,200	½		1,200.00

[fol. 17]

Robinson, Jean	Sp. Drawing	Sept.	1920	$1,600	13½	$3,200	$2,784.00
Russell, Alida M.	2nd Grade St.	Sept.	1911	700	22½	2,500	2,200.00
Smith, Dorothy V.	Phy. Tr. Cert.	Aug.	1927	1,400	6½	1,800	1,620.00
Stocking, Vaughn D.	Supervisors	Nov.	1908	680	25 1/6	4,300	3,655.00
Welch, Jessie A.	Per. Elem. State	June	1901	460	32½	2,500	2,200.00
Whelan, Adelaide	Perm. Elem.	Feb.	1929	1,200	5	1,450	1,305.00
White, Loretta	2nd Gr. State	Sept.	1921	1,600	9½	2,500	2,200.00
Williams, Susan	Spec. Drawing	May	1927	1,800	6½	2,275	2,024.75
Winter, Nell L.	Perm. State	Sept.	1921	1,600	12½	2,500	2,200.00
Yachter, Ethel	Perm. Elem.	Sept.	1930	1,200	3½	1,300	1,200.00

School No. 3

J. E. Dransfield	Perm. Supv.	Mar.	1919	1,800	15	4,000	3,400.00
Katherine Donovan	Perm. Drawing	Feb.	1930	1,400	4	1,550	1,400.00
Ruth Lindstrom	Perm. Spec. Music	Sept.	1929	1,400	4.9	1,600	1,440.00
Mollie Abramson	Perm. Elem.	Feb.	1928	1,200	6	1,600	1,440.00
Alice Brewton	Limited Sec.	Sept.	1925	1,700	8½	2,450	2,180.50
Margaret Chaplin	Perm. Elem.	Sept.	1925	1,500	8½	2,150	1,913.50
Geneva Dobbs	" "	July	1919	800	14½	2,300	2,047.00
Ella Field	" "	Sept.	1921	1,200	9	1,775	1,597.50
Clara S. Greene	Perm. Kg. Prim.	May	1916	560	17½	2,400	2,136.00
Ruth Humphrey	Perm. Elem.	Sept.	1924	1,200	9½	2,000	1,780.00

School No. 3—Continued

Name	Certificate	Date of Appointment	Initial Salary	Approximate Yrs. of Service	Salary 1932-1933	Salary 1933-1934
Lillian Hunt	Perm. Elem.	Sept. 1918	700	15½	2,500	2,200.00
Harriet Jochem	" "	Sept. 1929	1,200	4½	1,400	1,260.00
Caroline Johansen	" "	Nov. 1918	700	15½	2,300	1,600.00
Grace Kaiser	" "	Sept. 1922	1,200	11½	2,225	1,980.25
Wilma A. Lindlof	" "	Sept. 1924	1,200	9½	2,000	1,780.00
Alice Mitten	" "	Sept. 1927	1,200	6	1,400	1,260.00
Mary Nolan	" "	Sept. 1922	1,600	11½	2,300	2,047.00
Sylvia Schweitzer	" "	Sept. 1930	1,200	4½	1,300	1,200.00
Lenora Spellman	" "	Sept. 1916	660	17½	2,500	2,200.00
Elizabeth Steinel	" "	Sept. 1916	560	17½	2,125	1,891.25
Augusta Taubman	Perm. Sec.	Sept. 1930	1,400	3½	1,500	1,400.00
Carolina Trott	" "	Sept. 1929	1,400	4½	1,600	1,440.00
Elvira Wiese	Perm. Kg. Prim.	June 1926	1,200	7½	1,800	1,620.00
		School No. 4				
Ruth Austin	Perm. Elem.	June 1915	$ 700	17½	$2,475	$2,202.75
Bess F. Berry	" "	Jan. 1913	700	21	2,500	2,200.00
Olive Browne	" "	Feb. 1926	1,600	8	2,125	1,891.25
Teresa Camfield	" Sec.	June 1924	1,450	9½	2,000	1,780.00
Florence Caso	" Elem.	Sept. 1929	1,200	4½	1,400	1,260.00
Florence Connell	" "	Sept. 1928	1,200	5½	1,500	1,350.00
Helen Crocker	" "	Sept. 1912	685	21½	2,500	2,200.00
Rosella Dyroff	Perm. Sec.	May 1920	1,400	13½	2,500	2,200.00
Rose Hirshman	Perm. Elem.	Sept. 1926	1,200	7½	1,800	1,620.00
Celia Klinger	" "	Feb. 1929	1,400	5	1,650	1,485.00
Hazel Lake	" "	Sept. 1920	1,100	13½	2,300	2,047.00

Julia Martin	" "	Sept.	1928	1,200	5½	1,500	1,350.00
Mary McGuinness	" "	Sept.	1926	1,200	7½	1,750	1,575.00
Anne McKeown	Perm. 1st Gr. County	Oct.	1897	175	30½	2,500	2,200.00
Edith Miller	Perm. Elem.	July	1911	560	22½	2,500	2,200.00
Sara Mindlin	Perm. Elem.	Apr.	1922	1,200	11½	2,200	1,958.00
Edith Mounce	" "	Nov.	1921	1,200	11 7,10	2,200	1,958.00
Katherine Redding	" "	Sept.	1911	680	22½	2,500	2,200.00
Isabel Riese	" "	Sept.	1928	1,200	5½	1,525	1,372.50
Mary Spellman	" "	Nov.	1914	700	19½	2,500	2,200.00
Virginia Swenson	Perm. Kg. Prim.	Oct.	1930	1,200	3½	1,290	1,200.00
Cecelia Vogt	Limited Elem.	Sept.	1933	1,200	3		1,200.00
Charlotte Weiss	Perm. Elem.	Apr.	1919	800	14½	2,500	2,200.00
Marie Wintrich	Special Kg.	Sept.	1906	500	27½	2,500	2,200.00
Mary Lucas	Perm. 1st Gr.	Sept.	1896	350	37½	4,400	3,740.00

[fol. 18]

School No. 5

W. W. Staver	Perm. Supv.	Sept.	1916	$1,600	17½	$4,300	$3,655.00
Laura Brandt	Perm. Elem.	June	1922	1,200	11½	2,175	1,935.75
Edith Brown	Sec. Gr. State	Sept.	1910	700	23½	2,500	2,200.00
Grace Carroll	Perm. Elem.	Apr.	1919	800	14½	2,500	2,200.00
Margaret Claffy	Sec. Gr. State	June	1909	620	24½	2,500	2,200.00
Mary Clark	" " "	Sept.	1906	710	26 3/10	2,500	2,200.00
Ethel Creamer	" " "	Aug.	1908	590	25½	2,500	2,200.00
Retta Curry	Perm. Elem.	June	1919	800	14½	2,225	1,980.25
Nettie Feit	" "	Sept.	1925	1,200	8½	1,900	1,710.00
Edna Folley	" "	Jan.	1921	1,100	13	2,300	2,047.00
Florence Goldsmith	" "	Feb.	1926	1,200	8	1,750	1,575.00
Frieda Harris	" "	Sept.	1933	1,200	3½		1,200.00
Caroline Hauschild	" "	June	1912	610	20½	2,500	2,200.00

School No. 5—Continued

Name	Certificate	Date of Appointment	Initial Salary	Approximate Yrs. of Service	Salary 1932-1933	Salary 1933-1934
Minnie Holthusen	Perm. Elem.	Oct. 1909	560	24½	2,500	2,200.00
Kathryn Holtje	" "	Aug. 1921	1,600	12½	2,375	2,113.75
Alice Hugger	" "	May 1921	1,100	12 6/10	2,275	2,024.75
Harriet Johansen	" "	June 1917	600	16½	2,000	1,780.00
Edna Klenk	" "	Feb. 1927	1,200	7	1,725	1,552.50
Eleanor Knoepfel	" "	Feb. 1926	1,200	8	1,825	1,642.50
Margaret Kretschman	" "	Feb. 1922	1,200	9	2,275	2,024.75
Marie Lauer	" "	June 1922	1,200	11½	2,150	1,913.50
Martha Leino	" "	Sept. 1921	1,450	12½	2,300	2,047.00
Katharine Lyons	" "	Sept. 1925	1,200	8½	1,875	1,687.50
Dorothea McFarlin	" "	Feb. 1925	1,200	9	1,875	1,687.50
Marie Miller	" "	Feb. 1926	1,500	8	2,175	1,935.75
Carrie Morris	Sec. Gr. State	Apr. 1913	800	20½	2,500	2,200.00
Margaret Morris	" " "	Aug. 1911	650	22½	2,500	2,200.00
Blanche Muller	Perm. Elem.	Sept. 1925	1,200	8½	1,925	1,732.50
Dolores Mulvihill	" "	Mar. 1920	1,150	12½	2,300	2,047.00
Viola Neubert	" "	Sept. 1929	1,200	4½	1,400	1,260.00
Saidie Nicoll	Perm. Kg. Prim.	July 1917	600	16½	2,300	2,047.00
Lucille Robertori	Perm. Elem.	Sept. 1923	1,200	10½	2,100	1,869.00
Florence Robinson	" "	Sept. 1920	1,450	13½	2,300	2,047.00
Filomena Sarubbi	" "	Jan. 1917	560	17	2,250	2,002.50
Blanche Sonder	" "	July 1913	560	18.4	2,125	1,891.25
Ellen Smith	Perm. Kg.	Apr. 1921	1,400	12½	2,300	2,047.00
Ida Smith	Sec. Gr. State	Dec. 1921	1,645	16	2,500	2,200.00
Marjorie Stein	Perm. Elem.	Mar. 1921	1,200	10	2,100	1,869.00
Harriet Stillwell	" "	Mar. 1920	1,100	13½	2,225	1,980.25

Alice Swinston	Sec. Gr. State	June	1910	630	23½	2,500	2,200.00
Johnetta Thorne	" " "	June	1916	800	17½	2,500	2,200.00
Jennie Thorpe	" " "	July	1920	1,500	13½	2,500	2,200.00
Ellen Tierney	Perm. Elem.	Mar.	1920	800	13.8	2,300	2,047.00
Mabel Roberson	Perm. Sec.	Sept.	1926	1,450	7½	1,975	1,777.50
Elwood McFarlin	Perm. Shop Wk.	Sept.	1926	1,700	7½	2,450	2,180.50
Helen Byrne	Perm. Spec. Drawing	Sept.	1907	800	25 2/3	3,500	3,010.00
G. A. Pohl	Perm. Spec. Phys. Tr.	Aug.	1916	1,200	17½	3,400	2,958.00
		School No. 6					
Ethel G. Agolia	Perm. Elem.	Sept.	1926	1,200	6 1/5	1,675	1,507.50
M. Virginia I. Beam	" "	Sept.	1919	800	9	1,650	1,485.00
Frances Borg	" "	Sept.	1927	1,200	6½	1,600	1,440.00
Matilda Cascardo	" "	Sept.	1933	1,200	4		1,200.00
Mary Bracanovic	Limited Elem.	Sept.	1933	1,200	2 4/5		1,200.00
Mary Collins	Perm. Elem.	June	1915	560	18½	2,490	2,216.10
Elizabeth Cullinan	" "	Sept.	1924	1,200	9½	2,000	1,780.00
Amy L. Dromeshauser	" "	Sept.	1929	1,200	4½	1,400	1,260.00
[fol. 19]							
Edith M. DuBois	2nd State	Apr.	1908	630	24	2,500	2,200.00
Pauline Farber	Perm. Elem.	Sept.	1923	1,200	10½	2,050	1,824.50
Frances Gerisch	" "	Feb.	1927	1,200	7	1,700	1,530.00
Ruth S. Gulkis	Limited Sec.	Sept.	1933	1,200	½		1,200.00
Julia Harris	Perm. Elem.	Sept.	1926	1,200	7½	1,725	1,552.50
Olive Humphrey	" "	June	1917	600	16½	2,300	2,047.00
Emma Kingston	2nd State	Sept.	1913	700	20½	2,500	2,200.00
Nellie Lavery	Perm. Elem.	June	1921	1,200	12½	2,275	2,024.75
Nancy Logan	Perm. Elem. & Spec. defectives	Sept.	1920	1,435	17 8/10	2,500	2,200.00

School No. 6—Continued

Name	Certificate	Date of Appointment	Initial Salary	Approximate Yrs. of Service	Salary 1932-1933	Salary 1933-1934
Anne Machewirth	Perm. Elem.	Dec. 1919	800	14 1/5	2,300	2,047.00
Arline Mansfield	Perm. Kg. Prim.	Apr. 1922	1,200	11½	2,200	1,958.00
Palmera Martignone	Perm. Elem.	Sept. 1933	1,200	3½		1,200.00
Lillian Miller	" "	Jan. 1927	1,200	5½	1,660	1,494.00
Ann Mitten	" "	May 1924	1,200	9½	1,950	1,755.00
Rose Movsesyan	Perm. Kg. Prim.	Sept. 1926	1,200	7½	1,750	1,575.00
Harriet G. Parrott	Perm. Elem.	Apr. 1919	800	14	2,000	1,780.00
Anna Parsek	" "	Sept. 1929	1,200	4½	1,400	1,260.00
Alice M. Rowlands	" "	Sept. 1922	1,200	11½	2,250	2,002.50
Adelaide Schmidt	Perm. Kg. Prim.	Sept. 1926	1,200	6½	1,750	1,575.00
Katherine Schultz	Perm. Elem.	Sept. 1929	1,200	4½	1,400	1,260.00
Ruth Socol	Perm. Elem.	Sept. 1933	1,200	3½		1,200.40
Helen Thomas	" "	Sept. 1929	1,200	4½	1,400	1,260.00
Fannie B. Traum	" "	Feb. 1928	1,200	6	1,600	1,440.00
Estelle Zellman	Perm. Kg. Prim.	Feb. 1925	1,200	9	1,975	1,777.50
Charlotte Cole	Perm. Elem.	Sept. 1921	1,350	12½	2,425	2,158.25
Joseph Cuviello	Limited Spec. Music	Feb. 1931	1,400	3	1,450	1,400.00
I. V. Diamond	Perm. Supv.	June 1907	720	26½	3,400	2,958.00
Carl LaRose	Perm. Spec. Man. Tr.	Feb. 1928	1,400	6	1,750	1,600.00
Elizabeth Morse	Perm. Spec. Subnormal	Sept. 1914	800	19½	3,350	2,914.50
Mary P. Diamond	Perm. Supr.	Sept. 1904	650	29½	4,100	3,485.00

The following list shows the names of clerks and nurses employed in the West New York school system who do not hold New Jersey teaching certificates. Said list also shows for each of the persons named, the original date of appointment in the West New York school system, initial salary, approximate number of years of service, the salary for the school year 1932-1933, and the salary for the school year 1933-1934:

Clerks

	Date of Appointment	Initial Salary	Approximate Yrs. of Service	Salary 1932-1933	Salary 1933-1934
Marie Martin	Nov. 1924	$1,000	9.3	$1,500	$1,200.00
Virginia Otis	Sept. 1930	1,000	3½	1,100	1,000.00
Sylvia Wilson	July 1924	1,000	9½	1,500	1,200.00
Angela Wintrich	Feb. 1923	1,100	11	1,500	1,200.00
Cathleen Bach	Sept. 1925	1,000	8½	1,500	1,200.00
Marion Holm	Sept. 1933	900	½		900.00
Madelyn Offerman	Oct. 1925	1,000	8	1,000	1,200.00
Helen Roth	Sept. 1933	900	½		900.00

Nurses

Mary V. Quinlan	Jan. 1925	$1,400	8½	$2,000	$1,600.00
Catherine Collins	Sept. 1923	1,750	11	2,000	1,600.00
Edna Craddock	Oct. 1920	1,400	13½	2,000	1,600.00
Catherine DeLaney	Oct. 1921	1,500	13	2,000	1,600.00
Henrietta Serf	Oct. 1930	1,400	3 5/12	1,500	1,400.00

[fol. 20] 2. As alleged in the petition of appeal and admitted in the answer thereto, the appellant was employed to teach in the public schools of the Town of West New York for a period of one year, beginning September 1, 1921 at an annual salary of $2300. Appellant has been continuously engaged as a teacher in the public schools of West New York during all school years since the school year 1921-1922, having taught in said schools from September 1921 until the present time. For the school year 1922-1923 the contract of appellant to teach in the public schools of West New York was renewed and the salary of appellant increased to $2450 per annum. For the school year 1923-1924 said contract was again renewed and the salary of appellant was increased to $2600 annually. For the school year 1924-1925 said contract was again renewed and the salary of appellant was increased to $2750. Since the school year 1924-1925 the contract of appellant to teach in the public schools of West New York has continued in full force and effect and for the school year 1925-1926 the salary of appellant was raised to $2900, for the school year 1926-1927 the salary of appellant was raised to $3050, for the school year 1927-1928 the salary of appellant was raised to $3200 and for the school year 1928-1929 the salary of appellant was fixed at $3200.00. The said salary of appellant remained fixed at the sum of $3200 for the school years 1929-1930, 1930-1931, 1931-1932 and 1932-1933. Appellant has been engaged as a teacher in the public schools of the Town of West New York for a period of more than three consecutive years and no written charges have ever been preferred against appellant and appellant has not been charged with or been guilty of inefficiency, incapacity, conduct unbecoming a teacher or other offenses constitut-
[fol. 21] ing just cause for the reduction of his salary or the termination of his employment.

3. By a resolution dated June 23, 1933 the Board of Education of the Town of West New York undertook to reduce the salaries of the superintendent of schools, all principals, supervisors and teachers for the school year 1933-1934. Said resolution reads as follows:

"Resolved, That between July 1, 1933, and July 1, 1934, the salaries of the superintendent of schools and of all principals, supervisors and teachers in the West New

York School system be and they are hereby reduced as follows:

All salaries from $1200 to $1999 per annum reduced ten per cent;

All salaries from $2000 to $2499 per annum reduced eleven per cent;

All salaries from $2500 to $2999 per annum reduced twelve per cent;

All salaries from $3000 to $3499 per annum reduced thirteen per cent;

All salaries from $3500 to $3999 per annum reduced fourteen per cent;

All salaries from $4000 to $5600 per annum reduced fifteen per cent;

all figures being inclusive; provided however, that the salary of any elementary school teacher shall not be reduced below the minimum of $1200 per annum, and the salary of any high school teacher shall not be reduced below the minimum of $1600 per annum.

(Sgd.) Arthur H. Einbeck.

Dated June 23, 1933."

[fol. 22] 4. By a resolution dated June 23, 1933 the Board of Education of the Town of West New York undertook to reduce for the school year 1933-1934 the salaries of the nurses named at the end of paragraph one of this stipulation to the amounts shown in said paragraph.

5. By a third resolution dated June 23, 1933 the Board of Education of the Town of West New York undertood to reduce the salaries of certain named persons, called Clerks, by said resolution. Said resolution reads as follows:

"Resolved, that between July 1, 1933 and July 1, 1934, the salaries of clerks in the West New York school system be and they are hereby reduced to the amounts set opposite their respective names below:

Pearl Rutan	$2200	per annum
Rose Millimet	1600	" "
Caroline Johansen	1600	" "
Madelyn Offerman	1200	" "
Angela Wintrich	1200	" "
Marie Martin	1200	" "

Sylvia Wilson	1200	per annum
Cathleen Bach	1200	" "
Virginia Otis	1000	" "
Helen Roth	900	" "
Marion Holm	900	" "

(Sgd.) Arthur H. Einbeck.

Dated June 23, 1933."

6. As alleged in the petition of appeal and admitted in the answer thereto, the appellant, since the passage of the resolution dated June 23, 1933, purporting to reduce the salaries of teachers, has accepted no compensation for the [fols. 23-30] school year 1933-1934 for the performance of his duties as a teacher in the public schools of West New York, and appellant has not agreed, expressly or impliedly, to the terms of said resolution dated June 23, 1933, nor to the manner in which said resolution has been applied by the Board of Education of the Town of West New York.

The foregoing stipulation is entered into as a substitute for the taking of testimony and the cause is to be submitted for determination as though the foregoing facts had been proved by qualified witnesses, each party reserving full rights to argue all questions of law which may be presented by the foregoing facts and by the petition of appeal and the answer thereto. And it is further stipulated that in case the Commissioner of Education desires further proof on any issue raised by the petition of appeal and the answer thereto, that such proof may be furnished by further stipulation or by the taking of testimony.

Dated May 9, 1934.

McCarter & English, Attorneys of Petitioner. Reinhold Hekeler, Attorney of Respondent.

[fols. 31-32] STATEMENT OF NEW JERSEY, DEPARTMENT OF PUBLIC INSTRUCTION

JAY B. PHELPS, Appellant,

vs.

BOARD OF EDUCATION OF THE TOWN OF WEST NEW YORK, Respondent

DECISION OF COMMISSIONER OF EDUCATION

The testimony in this case is identical with that in the Askam, et al., vs. West New York Board of Education, decided this day by the Commissioner of Education, with the exception that for the school year 1933-1934 appellant has not accepted compensation for the performance of his duties as a teacher in the public schools and has not agreed expressly or impliedly to the terms of the first resolution set forth in the Askam case. Since it was held in that case that the respondent acted in accordance with its statutory authority, the fact that appellant did not accept compensation does not affect his status. For the reasons set forth in the Askam decision, this petition is dismissed.

Charles H. Elliott, Commissioner of Education.

July 18, 1934.

[fols. 33-34] STATE BOARD OF EDUCATION

JAY B. PHELPS, Appellant,

vs.

BOARD OF EDUCATION OF THE TOWN OF WEST NEW YORK, Respondent

NOTICE OF APPEAL

To Reinhold Hekeler, Esq., Attorney of Respondent.

SIR:

Take notice, That the appellant in the above entitled cause appeals from the whole of the decision of the Commissioner of Education in said cause, which decision is dated July 18, 1934.

McCarter & English, Attorneys of Appellant.

Service of the within Notice of Appeal is hereby acknowledged this 14th day of August, 1934.

Reinhold Hekeler, Attorney of Respondent.

[fols. 35-38] STATE BOARD OF EDUCATION

JAY B. PHELPS, Appellant,

vs.

BOARD OF EDUCATION OF THE TOWN OF WEST NEW YORK, Respondent

DECISION

The testimony in this situation was identical with that in the Askam case, just decided, with the exception that for the school year 1933-1934 the appellant, Jay B. Phelps, has not accepted compensation for the performance of his duties as a teacher in the public schools, and he has not agreed, expressly or impliedly, to the terms of the first resolution set forth in the Askam case. The Commissioner dismissed Mr. Phelps' petition on the ground stated in his opinion in the Askam case and held that the fact that Mr. Phelps did not accept compensation does not affect his status. With this we agree, and recommend that the Commissioner's decision be affirmed.

February 9, 1935.

[fol. 39] IN SUPREME COURT OF NEW JERSEY

JAY B. PHELPS, Prosecutor,

vs.

BOARD OF EDUCATION OF THE TOWN OF WEST NEW YORK, and STATE BOARD OF EDUCATION, Defendants

REASONS.—Filed April 26, 1935

The prosecutor assigns as reasons for reversing the Decision of The State Board of Education brought up by this Writ of Certiorari the following:

1. The action of the Board of Education of the Town of West New York in reducing prosecutor's salary for the

period between July 1, 1933, and July 1, 1934, was in violation of Chapter 243 of the Laws of 1909 (the Teachers' Tenure Act).

2. The action of the Board of Education of the Town of West New York in reducing prosecutor's salary for the period between July 1, 1933, and July 1, 1934, was in violation of the terms of prosecutor's contract with said Board of Education.

3. The action of the Board of Education of the Town of West New York in reducing prosecutor's salary for the period between July 1, 1933, and July 1, 1934, is illegal, in that Chapter 12 of the Laws of 1933 authorizing Boards of Education to reduce salaries of employees, whether under tenure or not, is unconstitutional in the following [fol. 40] respects:

(a) It violates Article IV, sec. 7, par. 3 of the Constitution of New Jersey.

(b) It violates Article I, Sec. 10 of the Constitution of the United States by impairing the Obligation of Contracts.

(c) It violates Amendment XIV, Sec. 1 of the Constitution of the United States by depriving persons of property without due process of law and by denying to them the equal protection of the laws.

4. The action of the Board of Education of the Town of West New York in reducing prosecutor's salary for the period between July 1, 1933, and July 1, 1934, is illegal, in that Chapter 12 of the Laws of 1933 authorizing Boards of Education to reduce salaries of employees applies by its preamble only to school districts in which emergency exists, and no emergency has been shown to exist or to have existed in the Town of West New York.

5. The action of the Board of Education of the Town of West New York in reducing prosecutor's salary for the period between July 1, 1933, and July 1, 1934, is illegal, in that Chapter 12 of the Laws of 1933 authorizing Boards of Education to reduce salaries of employees applies by its preamble only to school districts in which emergency exists, and the said Board of Education of the Town of West New York did not inquire or determine whether an emergency

existed in said school district before attempting to reduce salaries under the provisions of said chapter.

[fols. 41-42] 6. The action of the Board of Education of the Town of West New York in reducing prosecutor's salary for the period between July 1, 1933, and July 1, 1934, is illegal, in that it violates Chapter 12 of the Laws of 1933 by discriminating among or between individuals in the same class of service.

McCarter & English, Attorneys for Prosecutor.

[File endorsement omitted.]

[fols. 43-44] In Supreme Court of New Jersey,
May Term, 1935

Nos. 248, 249

No. 248

Jay B. Phelps, Prosecutor,

v.

State Board of Education et al., Defendants

No. 249

Lucy Askam et al., Prosecutor,

v.

State Board of Education. et al., Defendants

Opinion.—Filed July 26, 1935

Argued May 10, 1935. Decided July 26, 1935

1. Chapter 12 of the Laws of 1933 (P. L., p. 24) is not unconstitutional as impairing the obligation of contracts, or as depriving a citizen of the equal protection of the laws, as applied to the prosecutors in this case.

2. The proviso in Chapter 12 of the Laws of 1933 (P. L., p. 24) forbidding discrimination among or between individuals in the same class of service is not violated by classifying teachers for purposes of salary reduction according to their former salaries.

3. The legislature by said act having declared the existence of an economic emergency requiring that certain [fol. 45] powers be given to every board of education, it was not necessary for an individual board so to adjudge before exercising the powers.

On Certiorari

Before Justices Parker, Case and Bodine

For the Prosecutors: Robert H. McCarter (Ward J. Herbert, on the brief).

For the Defendants: Raymond J. Otis.

The opinion of the court was delivered by

PARKER, J.:

These two writs of certiorari bring up decisions of the State Board of Education, affirming on appeal decisions of the State Commissioner of Education which dismissed appeals of the several prosecutors challenging a resolution of the Board of Education of West New York in Hudson County, dated June 23, 1933, which provided for certain reductions beginning July 1, 1933 in salaries of the superintendent of schools, principals, supervisors and teachers, by percentages varying according to amount of salary; also a resolution readjusting the salaries of certain named clerks at certain stated figures. The Commissioner of Education dismissed the appeals before him on July 18, 1934: the State Board affirmed on February 9, 1935.

[fol. 46] The resolution first mentioned, relating to those having the status of teachers, is founded on Chapter 12 of the Laws of 1933 (P. L., p. 24) entitled "An act respecting the salaries or compensation of officers and employees, and persons holding positions in the several school districts of this state." This act contains the following preamble:

"Whereas, due to present economic conditions, an emergency exists which requires that the board of education of every school district in this State be enabled to fix and determine, by resolution, the amount of salary or compensa-

tion to be paid to officers and employees of and persons holding positions in any such school district";

and proceeds to enact that

"The Board of Education of every school district in this State shall have full authority, by resolution, to fix and determine the salaries and compensation to be paid to officers and employees of and persons holding positions in any such school district, between the first day of July, 1933, and the first day of July, 1934, notwithstanding any such person be under tenure or not." There are certain provisos not here material, viz., that there shall be no increase of pay during the year: that rights in the pension fund remain unaffected: that the existing minimum salary of teachers of $70 per month remain unchanged: and a further proviso, relied on by prosecutors as part of their case, "that in fixing salaries or compensation, there shall be no discrimination among or between individuals in the same class of service."

[fol. 47] Section 2 provides that nothing in the act "shall be construed to affect or impair the continuity of position or employment under any tenure of office statute."

The resolution of June 23, 1933 relating to teachers reads as follows:

"Resolved, that between July 1, 1933 and July 1, 1934, the salaries of the superintendent of schools and of all principals, supervisors and teachers in the West New York School system be and they are hereby reduced as follows:

"All salaries from $1200 to $1999 per annum reduced ten per cent;

"All salaries from $2000 to $2499 per annum reduced eleven per cent;

"All salaries from $2500 to $2999 per annum reduced twelve per cent;

"All salaries from $3000 to $3499 per annum reduced thirteen per cent;

"All salaries from $3500 to $3999 per annum reduced fourteen per cent;

"All salaries from $4000 to $5600 per annum reduced fifteen per cent;

all figures being inclusive; provided, however, that the salary of any elementary school teacher shall not be reduced

below the minimum of $1200 per annum, and the salary of any high school teacher shall not be reduced below the minimum of $1600 per annum."

The other resolution of like date relates to "clerks" and and is as follows:

"Resolved, that between July 1, 1933 and July 1, 1934, the salaries of clerks in the West New York School system [fol. 48] be and they are hereby reduced to the amounts set opposite their respective names below:

"Pearl Rutan	$2200	per	annum.
"Rose Millimet	1600	"	"
"Caroline Johansen	1600	"	"
"Madelyn Offerman	1200	"	"
"Angela Wintrich	1200	"	"
"Marie Martin	1200	"	"
"Sylvia Wilson	1200	"	"
"Cathleen Bach	1200	"	"
"Virginia Otis	1000	"	"
"Helen Roth	900	"	"
'Marion Holm	900	"	"

We take up first the resolution affecting the teacher group. As to this, the two main propositions are that the act of 1933 is unconstitutional as impairing the obligation of contracts; and secondly, that the scheme of salary reductions violates the proviso in that act forbidding "discrimination among or between individuals in the same class of service."

The argument for unconstitutionality proceeds on these lines: after three years of contract service the teachers are entitled generally to indefinite tenure under the act of 1909, Chapter 243 (P. L., p. 398): that tenure is contractual, and the legislature is powerless to interfere with it, or to authorize a board of education to interfere. All the prosecutors in the teacher group are in the indefinite tenure class.

The act of 1909, relating to tenure, provides, among other things, that no teacher shall be dismissed or subjected to reduction of salary except for certain causes after charges and a trial. That established a legislative status for teach- [fol. 49] ers, but we fail to see that it established a contractual one that the legislature may not modify. If the argu-

ment now made is sound, the act of 1909 is irrepealable as to any teacher holding his position by tenure at any time thereafter. A board of education is a public body, created by the legislature, with certain powers conferred by statute. It is a municipal corporation, or at least a quasi municipal corporation, and, as such, subject to supervision and control by the legislature. The act of 1933 is in purport and effect, though not so entitled, an implied partial repealer or amendment of the tenure act of 1909, and we are clear that it was well within the power of the legislature. The status of tenure teachers, while in one sense perhaps contractual, is in essence dependent on a statute, like that of the incumbent of a statutory office, which the legislature at will may abolish, or whose emoluments it may change. See Vroom v. Board of Education, 79 N. J. Law, 46. We are clear that the legislature could repeal the act of 1909. If it could repeal it, it can modify it as thought best, and that it did by the act of 1933. It is suggested in the brief that the teachers have rights of the same standing as those of bondholders but we see no merit in this suggestion and hardly think it is made seriously.

Secondly, with regard to the claim that there is in the resolution discrimination between individuals in the same class of service because of the varying percentages of reduction based on salary limits. We are unable to perceive any such discrimination. The resolution relating to teachers divides them into six classes according to salary, the first class including those drawing salaries from $1,200 to $1,999 per annum, and so upward by steps of $500 each [fol. 50] except the last, where the limits are from $4,000 to $5,600. The higher the salary, the greater the percentage of reduction. But every one in the same class suffers the same per cent. reduction. It is true that in some cases where one salary is just over the minimum of the class, and another just under the maximum of the next class below, the first is cut to below the second; but that does not create a discrimination between individuals in the same class of service; it is simply an arithmetical result of applying a general formula. Counsel point out what is probably a clerical error touching two individuals who are apparently not parties to this proceeding. The complaint here is that the Board did not follow its own resolution, but that vagary

is not the object of attack by these writs. Again, it is said that the Board paid no attention to individual merit or demerit. Naturally, it did not, as that is expressly forbidden by the statute of 1933.

As to the resolution bearing on the clerks, counsel for respondent argues that they are not entitled under the tenure act, and claims they are not protected by the proviso in the act of 1933. But be this as it may, we concur in the view of the Commissioner of Education that the reductions are likewise by classes according to salary, the two $1,600 clerks being reduced from $2,300; the four $1,200 clerks from $1,500; the one $1,000 clerk from $1,100; the two $900 clerks being new employees. As to the two so-called teacher-clerks, we think that one holding a teacher's certificate but doing only clerical work is properly classified as a clerk. The question is what such a person is doing, not what he or she is certified as qualified to do.

Much of the voluminous brief for the prosecutors is devoted to the proposition that "There is no justification for [fol. 51] the assumption that there was in West New York at the time of the adoption of the salary resolutions, such a financial debacle as justified the passage of the resolutions." The brief treats this matter as though the Board, without so alleging in its resolutions, assumed the existence of an emergency in West New York, and as though this court must, if it can, assume such existence in order to support the resolutions. But the preamble of the statute, fully quoted above, expressly recites that "due to present economic conditions an emergency exists which requires that Boards of Education be enabled to fix and determine," etc. The argument apparently ignores this fact, viz., that the legislature itself in its preamble not only assumed, but declared, the existence of an emergency "which requires that the Board of Education of every school district in this state be enabled," etc. Language could not be broader or more definite, as a preface to the enacting clause.

The judgments and decisions of the State Board under review will be affirmed, with costs.

(Reported in 115 N. J. L. 310.)

[fol. 52] IN SUPREME COURT OF NEW JERSEY

No. 248

JAY B. PHELPS, Prosecutor,

vs.

STATE BOARD OF EDUCATION et al., Defendants

RULE OF AFFIRMANCE

The above matter having regularly come on for a hearing at the May Term, 1935, of this Court and it appearing to the court that the proceedings and orders of the Board of Education of the Town of West New York and of the State Board of Education, under review were regular and should be affirmed,

It is ordered this 10th day of October, 1935, that the writ of certiorari herein be dismissed with costs in favor of the defendants and against the prosecutor.

Entered October 10, 1935, on motion of
Reinhold Hekeler, Attorney for Defendants.

[fols. 53-54] IN SUPREME COURT OF NEW JERSEY

JAY B. PHELPS, Prosecutor,

vs.

STATE BOARD OF EDUCATION et als., Defendants

NOTICE AND GROUNDS OF APPEAL—Filed October 25, 1935

To Reinhold Hekeler, Esq., Attorney for Defendants.

SIR:

Please take notice that the Prosecutor appeals to the Court of Errors and Appeals of the State of New Jersey from the whole of the judgment entered in the above cause in the Supreme Court of New Jersey, on the following ground: that the New Jersey Supreme Court erred in dismissing the writ of certiorari in said cause and in giving judgment in favor of the defendants and against the prosecutor.

McCarter & English, Attorneys of Prosecutor-Appellant.

I hereby acknowledge service of the within Notice of Appeal and Grounds of Appeal this 18th day of October, 1935.

Reinhold Hekeler, Attorney for Defendants.

[fol. 55] In Court of Errors and Appeals of New Jersey

February Term, 1936

No. 35 (with 36)

Jay B. Phelps, Appellant,

—

Board of Education of the Town of West New York, N. J., et al., Respondents

Appeal from Supreme Court

Opinion—Filed May 14, 1936

Per Curiam:

The judgment under review herein should be affirmed for the reasons expressed in the opinion delivered by Mr. Justice Parker in the Supreme Court, reported in 115 N. J. Law 310.

[File endorsement omitted.]

[fol. 56] [Endorsed:] Filed Sept. 28, 1936. Fred L. Bloodgood, Clerk.

[fol. 57] In Court of Errors and Appeals of New Jersey

No. 35 (11782)

Jay B. Phelps, Appellant,

vs.

Board of Education of the Town of West New York et al., Respondents

On Appeal from Supreme Court

Rule of Affirmance—Filed May 21, 1936

The above cause having regularly come on for a hearing at the February Term, 1936, of this Court, and it appearing to this Court that the judgment entered in the above cause in the Supreme Court of New Jersey; under review, was proper in its entirety and should be affirmed.

It is Ordered this 14th day of May, 1936, that the said judgment appealed from be and the same is hereby in all things affirmed, with costs in favor of the respondents and against the appellant.

Entered June 4, 1936.

On Motion of Reinhold Hekeler, Attorney for Respondents.

[File endorsement omitted.]

[fol. 58] [Endorsed:] Filed Jun. 4, 1936. Fred L. Bloodgood, Clerk.

[fol. 59] In Supreme Court of the United States

Jay B. Phelps, Appellant,

vs.

Board of Education of the Town of West New York and State Board of Education of the State of New Jersey, Appellees

Petition for Appeal—Filed September 28, 1936

Considering himself aggrieved by the final decision of the Court of Errors and Appeals of the State of New Jersey

in the above entitled cause, the appellant therein, Jay B. Phelps, of the Town of West New York, New Jersey, hereby prays that an appeal be allowed to the Supreme Court of the United States herein and for an order fixing the amount of the bond thereon.

ASSIGNMENT OF ERRORS

Now comes the appellant above named and files herewith his petition for appeal and says that there are errors in the records and proceedings of the above entitled cause, and for the purpose of having the same reviewed in the Supreme Court of the United States, makes the following assignment:

1. The New Jersey Court of Errors and Appeals erred in giving judgment affirming the judgment of the New Jersey Supreme Court, holding Chapter 12 of the New Jersey Laws of 1933 to be a constitutional act.

2. The New Jersey Court of Errors and Appeals erred in failing to render judgment in favor of said appellant.

[fol. 60] 3. The New Jersey Court of Errors and Appeals erred in failing to hold that said Chapter 12 of the New Jersey Laws of 1933, impaired the obligation of an existing contract between the appellant and the appellees in violation of Article 1, Section 10 of the Constitution of the United States.

4. The New Jersey Court of Errors and Appeals erred in failing to hold that said Chapter 12 of the New Jersey Laws of 1933, deprived the appellant of his property without due process of law in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

5. The New Jersey Court of Errors and Appeals erred in failing to hold that said Chapter 12 of the New Jersey Laws of 1933, denied to the appellant the equal protection of the laws in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

6. The New Jersey Court of Errors and Appeals erred in holding that the action of the Board of Education of the Town of West New York in reducing appellant's salary for

the period between July 1st, 1933 and July 1st, 1934, taken under and by virtue of said Chapter 12 of the New Jersey Laws of 1933, was constitutional and not an impairment of the obligation of contracts in violation of Article 1, Section 10 of the Constitution of the United States.

7. The New Jersey Court of Errors and Appeals erred in holding that the action of the Board of Education of the Town of West New York in reducing appellant's salary for the period between July 1st, 1933 and July 1st, 1934, taken under and by virtue of said Chapter 12 of the New Jersey Laws of 1933, was constitutional and not a deprivation of property without due process of law in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

[fol. 61]

8. The New Jersey Court of Errors and Appeals erred in holding that the action of the Board of Education of the Town of West New York in reducing appellant's salary for the period between July 1st, 1933 and July 1st, 1934, taken under and by virtue of said Chapter 12 of the New Jersey Laws of 1933, was constitutional and not a denial of the equal protection of the laws in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

PRAYER FOR REVERSAL

For which errors the appellant, Jay B. Phelps, prays that the said judgment of the New Jersey Court of Errors and Appeals, which is dated May 21, 1936 in the above entitled cause, be reviewed by the Supreme Court of the United States, and reversed, and a judgment entered in favor of the appellant and for costs.

McCarter & English, Attorneys for and of Counsel with Appellant, by Robert H. McCarter.

[fol. 62] The within petition for appeal is hereby denied because of lack of jurisdiction this 20th day of August 1936.

Luther A. Campbell, Chancellor of the State of New Jersey and President Judge of the Court of Errors and Appeals in the Last Resort in all Causes.

[File endorsement omitted.]

[fol. 63] SUPREME COURT OF UNITED STATES

JAY B. PHELPS, Appellant,

vs.

BOARD OF EDUCATION OF THE TOWN OF WEST NEW YORK and STATE BOARD OF EDUCATION OF THE STATE OF NEW JERSEY, Appellees.

ORDER ALLOWING APPEAL—Filed September 28, 1936

The appellant in the above entitled cause, having prayed for the allowance of an appeal in said cause to the Supreme Court of the United States from the judgment entered in the New Jersey Court of Errors and Appeals in the Last Resort in all Causes on the 21st day of May, 1936, and having presented his petition for appeal, assignment of errors, prayer for reversal and statement, pursuant to the statutes and to the rules of the Supreme Court of the United States in such case made and provided;

It is Ordered that an appeal be and the same is hereby allowed to the Supreme Court of the United States from the New Jersey Court of Errors and Appeals in the Last Resort in all Causes, as provided by law, and it is further Ordered that the Clerk of the New Jersey Supreme Court, to which Court the record in said cause has been remitted, shall prepare and certify a transcript of the record, proceedings and judgment in said cause and transmit the same to the Supreme Court of the United States, so that he shall have the same in said Court within forty days of this date.

And it is further Ordered that security for costs on ap-
[fol. 64] peal be fixed in the sum of $100.00.

Dated this 21st day of August, 1936.

Owen J. Roberts, Associate Justice of the Supreme Court of the United States.

Entered September 28, 1936, on motion of McCarter & English, Attorneys of Appellant.

[fols. 65-76] [File endorsement omitted]

[fols. 77-78] IN SUPREME COURT OF NEW JERSEY

[Seal of the Court]

WRIT OF CERTIORARI

NEW JERSEY, ss:

The State of New Jersey to the Board of Education of the Town of West New York and the State Board of Education, Greeting:

We being willing for certain reasons to be certified of a decision made on February 9, 1935 by the State Board of Education of the State of New Jersey on an appeal to said State Board of Education from a decision of the Commissioner of Education of the State of New Jersey, dated July 18, 1934, in the matter of Lucy Askam, et als., appellants, and Board of Education of the Town of West New York, respondent; do command you that the said decision, together with all things touching and concerning the same, as fully and entirely as before you they remain, to our Justices of our Supreme Court of Judicature at Trenton, on the 7th day of May, 1935, you certify and send, together with this writ; that therein may be done what of right and according to the laws of this State should be done.

Witness, Thomas J. Brogan, Esquire, Chief Justice of our Supreme Court, at Trenton, this 23rd day of April, 1935.

Fred L. Bloodgood, Clerk. McCarter & English, Attorneys.

I allow this writ. Let it be sealed.

Dated April 22, 1935.

Charles W. Parker, J. S. C.

[fols. 79-80] STATE OF NEW JERSEY, DEPARTMENT OF PUBLIC INSTRUCTION

LUCY ASKAM, ELIZABETH V. BORNEMAN, ALICE BREWTON, Inez A. Becker, Jennie P. Buonaccorsi, Edith Brown, Helen F. Clohosy, Genevieve Creighton, Elvira Chiricosta, Edward Carroll, Margaret Chaplin, Mary E. Chase, Mary I. Clark, Ethel Creamer, Mrs. Viola Donovan, George DeLamater, Geneva Dobbs, John Edgar Dransfield, Walter Eickmann, Elsie H. Eckardt, Esther J. Ekegren, Ida B. Forbes, Bertha Godfrey, Abe Golden, Clara Greene, Mae H. Girsham, Olga Grossmann, Emma Hubert, Esther E. Hanna, Alice Halfpenny, Ruth Humphrey, Lillian Hunt, Frances C. Hangley, Minnie C. Holthusen, Carrie Hauschild, Mrs. Reintraut Jonsson, Harriet Jochem, Mrs. Caroline Johansen, Rose Jacobs, Herman F. Kraus, Grace Kaiser, Evelyn Klees, Alice Luckings, Wilma Lindlof, Ruth Lindstrom, Samuel Litzenberg, Josephine Logioio, Audrey Lundell, Edna Moreau, Harriet Mac Ewan, Agnes D. McDermott, Maude Meyers, Dorothy L. Michaels, Margaret Morris, Carrie Morris, Mary Nolan, Saidie Nicoll, Gustave Pohl, Gertrude Reiley, Mary Robinson, Thomas Roop, Mary Ross, Maud Rafter, Lillian Rank, Alysse Reiley, Gertrude Reineman, Alida Russell, Peter Sottung, Elizabeth Steinel, Vaughn D. Stocking, Ida M. Smith, Marjorie Stein, Alice Swinston, Ellen Smith, Wilson W. Staver, Johnetta Thorne, Jennie Thorp, Carolyn Trott, Bernice Young, Carlos A. Woodworth, Gilbert C. Wagner, John White, Elvira Wiese, Jessie Welch, Adelaide Whelen, Loretta V. White, Nell L. Winter, Florence Eldred, Willis S. Eshleman, John McGrath, Vincent McGuinness, Robert Rollins, Jr., Edna Stone and Viola Neubert, Appellants,

VS.

BOARD OF EDUCATION OF THE TOWN OF WEST NEW YORK, Respondent

PETITION OF APPEAL

The above named appellants hereby petition the Commissioner of Education of the State of New Jersey to re-[fol. 81] view and set aside the resolution adopted by the

Board of Education of the Town of West New York on June 23, 1933, which resolution purports to reduce the salary of each of the above named appellants for the period between July 1, 1933 and July 1, 1934. A true copy of said resolution is hereto annexed as Schedule A. The appellants set forth that said resolution was unlawfully adopted and is illegal and say that:

1. Appellants are all teachers or principals of the public schools of the Town of West New York and each of appellants has served a period of employment of more than 3 consecutive years in the public school system of said Town and each of the appellants is now employed in the public school system of said Town.

2. None of the appellants have been guilty of inefficiency, incapacity, conduct unbecoming a teacher or any other offence constituting just cause for dismissal or reduction of salary, and no written charges have been preferred against any of the appellants for inefficiency, incapacity, conduct unbecoming a teacher or other offence constituting just cause for dismissal or reduction of salary.

3. The aforesaid resolution of the Board of Education of the Town of West New York dated June 23, 1933 purports to reduce the salary of each of appellants for the school year 1933-1934. The appellants allege and show that said resolution is in violation of the provisions of an act entitled "An Act to establish a thorough and efficient system of free public schools and to provide for the maintenance, support and management thereof," approved October 19, 1903, and the several amendments thereof and supplements thereto, in that, among other things, each of the appellants is entitled [fol. 82] to retain his or her employment during good behavior and efficiency, without reduction of salary or compensation. Appellants further allege and show that said resolution is an illegal and improper interference with the terms of their contracts of employment and is without force and effect as a modification of said contracts.

4. The appellants, Lucy Askam, Helen F. Clohosy, Abe Golden, Mary Robinson, Thomas Roop and Gilbert Wagner, by the terms of their respective contracts of employment as teachers in the public schools of West New York became entitled to salaries of $3200 for the school year 1932-1933.

The aforesaid resolution dated June 23, 1933 purports to reduce the compensation of said appellants by 13% for the period between July 1, 1933 and July 1, 1934, being the school year 1933-1934. Since the opening of the public schools of West New York for the school year 1933-1934 said appellants have received compensation for only two weeks and have each been paid the sum of $139.20 as said compensation for said two weeks.

5. The appellant Elizabeth V. Borneman by the terms of her contract of employment as a principal in the public schools of West New York became entitled to a salary of $3900 for the school year 1932-1933. The aforesaid resolution dated June 23, 1933 purports to reduce the compensation of said appellant by 14% for the period between July 1, 1933 and July 1, 1934, being the school year 1933-1934. Since the opening of the public schools of West New York for the school year 1933-1934 said appellant has received compensation for only two weeks and has been paid the sum of $167.70 as said compensation for said two weeks.

[fol. 83] 6. The appellant Alice Brewton by the terms of her contract of employment as a teacher in the public schools of West New York became entitled to a salary of $2450 for the school year 1932-1933. The aforesaid resolution dated June 23, 1933 purports to reduce the compensation of said appellant by 11% for the period between July 1, 1933 and July 1, 1934, being the school year 1933-1934. Since the opening of the public schools of West New York for the school year 1933-1934 said appellant has received compensation for only two weeks and has been paid the sum of $109.02 as said compensation for said two weeks.

7. The appellants, Inez A. Becker, Edith Brown, Mary I. Clark, Ethel Creamer, Ida B. Forbes, Lillian Hunt, Minnie C. Holthusen, Carrie Hauschild, Margaret Morris, Carrie Morris, Maud Rafter, Alida Russell, Ida M. Smith, Alice Swinston, Johnetta Thorne, Jennie Thorp, Jessie Welch, Loretta V. White and Nell L. Winter, by the terms of their respective contracts of employment as teachers in the public schools of West New York became entitled to salaries of $2500 for the school year 1932-1933. The aforesaid resolution dated June 23, 1933 purports to reduce the compensation of said appellants by 12% for the period between July 1, 1933 and July 1, 1934, being the school year 1933-1934.

Since the opening of the public schools of West New York for the school year 1933-1934 said appellants have received compensation for only two weeks and have each been paid the sum of $110.00 as said compensation for said two weeks.

8. The appellants, Jennie P. Buonaccorsi, Walter Eickmann, Olga Grossmann and Josephine Logioio, by the terms of their respective contracts of employment as teachers in [fol. 84] the public schools of West New York became entitled to salaries of $2075 for the school year 1932-1933. The aforesaid resolution dated June 23, 1933 purports to reduce the compensation of said appellants by 11% for the period between July 1, 1933 and July 1, 1934, being the school year 1933-1934. Since the opening of the public schools of West New York for the school year 1933-1934 said appellants have received compensation for only two weeks and have each been paid the sum of $92.33 as said compensation for said two weeks.

9. The appellant, Genevieve Creighton, by the terms of her contract of employment as a teacher in the public schools of West New York became entitled to a salary of $2825 for the school year 1932-1933. The aforesaid resolution dated June 23, 1933 purports to reduce the compensation of said appellant by 12% for the period between July 1, 1933 and July 1, 1934, being the school year 1933-1934. Since the opening of the public schools of West New York for the school year 1933-1934 said appellant has received compensation for only two weeks and has been paid the sum of $124.30 as said compensation for said two weeks.

10. The appellant, Elvira Chiricosta, by the terms of her contract of employment as a teacher in the public schools of West New York became entitled to a salary of $3100 for the school year 1932-1933. The aforesaid resolution dated June 23, 1933 purports to reduce the compensation of said appellant by 13% for the period between July 1, 1933 and July 1, 1934, being the school year 1933-1934. Since the opening of the public schools of West New York for the school year 1933-1934 said appellant has received compensation for only two weeks and has been paid the sum of $134.85 as said compensation for said two weeks.

[fol. 85] 11. The appellants, Edward Carroll, George DeLamater, Bertha Godfrey, Emma Hubert, Esther E. Han.

na, Herman F. Krause, Alice Luckings, Gustaye Pohl, Mary Ross, Willis S. Eshleman and Edna Stone, by the terms of their respective contracts of employment as teachers in the public schools of West New York became entitled to salaries of $3400 for the school year 1932-1933. The aforesaid resolution dated June 23, 1933 purports to reduce the compensation of said appellants by 13% for the period between July 1, 1933 and July 1, 1934, being the school year 1933-1934. Since the opening of the public schools of West New York for the school year 1933-1934 said appellants have received compensation for only two weeks and have each been paid the sum of $147.90 as said compensation for said two weeks.

12. The appellants, Margaret Chaplin and Dorothy L. Michaels, by the terms of their respective contracts of employment as teachers in the public schools of West New York became entitled to salaries of $2150 for the school year 1932-1933. The aforesaid resolution dated June 23, 1933 purports to reduce the compensation of said appellants by 11% for the period between July 1, 1933 and July 1, 1934, being the school year 1933-1934. Since the opening of the public schools of West New York for the school year 1933-1934 said appellants have received compensation for only two weeks and have each been paid the sum of $95.67 as said compensation for said two weeks.

13. The appellants, Mary E. Chase, Geneva Dobbs, Mae H. Girsham, Frances C. Hangley, Rose Jacobs, Mary Nolan, Saidie Nicoll, Lillian Rank and Ellen Smith, by the terms of their respective contracts of employment as teachers in [fol. 86] the public schools of West New York became entitled to salaries of $2300 for the school year 1932-1933. The aforesaid resolution dated June 23, 1933 purports to reduce the compensation of said appellants by 11% for the period between July 1, 1933 and July 1, 1934, being the school year 1933-1934. Since the opening of the public schools of West New York for the school year 1933-1934 said appellants have received compensation for only two weeks and have each been paid the sum of $102.35 as said compensation for said two weeks.

14. The appellant, Caroline Johansen, by the terms of her contract of employment as a teacher in the public schools

of West New York became entitled to a salary of $2300 for the school year 1932-1933. The aforesaid resolution purports to reduce said salary by 11% for the period between July 1, 1933 and July 1, 1934, being the school year 1933-1934. Since the opening of the public schools of West New York for the school year 1933-1934 said appellant has received compensation for only two weeks and has been paid the sum of $80 as and for her full compensation for said two weeks.

15. The appellant, Mrs. Viola Donovan, by the terms of her contract of employment as a teacher in the public schools of West New York became entitled to a salary of $2875 for the school year 1932-1933. The aforesaid resolution dated June 23, 1933 purports to reduce the compensation of said appellant by 12% for the period between July 1, 1933 and July 1, 1934, being the school year 1933-1934. Since the opening of the public schools of West New York for the school year 1933-1934 said appellant has received compensation [fol. 87] for only two weeks and has been paid the sum of $126.50 as said compensation for said two weeks.

16. The appellant, John Edgar Dransfield, by the terms of his contract of employment as a principal in the public schools of West New York became entitled to a salary of $4000 for the school year 1932-1933. The aforesaid resolution dated June 23, 1933 purports to reduce the compensation of said appellant by 15% for the period between July 1, 1933 and July 1, 1934, being the school year 1933-1934. Since the opening of the public schools of West New York for the school year 1933-1934 said appellant has received compensation for only two weeks and has been paid the sum of $170 as said compensation for said two weeks.

17. The appellant, Elsie H. Eckardt, by the terms of her contract of employment as a teacher in the public schools of West New York became entitled to a salary of $2025 for the school year 1932-1933. The aforesaid resolution dated June 23, 1933 purports to reduce the compensation of said appellant by 11% for the period between July 1, 1933 and July 1, 1934, being the school year 1933-1934. Since the opening of the public schools of West New York for the school year 1933-1934 said appellant has received compensation for only two weeks and has been paid the sum of $90.11 as said compensation for said two weeks.

18. The appellants, Esther J. Ekegren and Gertrude Reineman, by the terms of their respective contracts of employment as teachers in the public schools of West New York became entitled to salaries of $1950 for the school year 1932-1933. The aforesaid resolution dated June 23, 1933 purports to reduce the compensation of said appellants by 10% for the period between July 1, 1933 and July 1, [fol. 88] 1934, being the school year 1933-1934. Since the opening of the public schools of West New York for the school year 1933-1934 said appellants have received compensation for only two weeks and have each been paid the sum of $87.75 as said compensation for said two weeks.

19. The appellant, Clara Greene, by the terms of her contract of employment as a teacher in the public schools of West New York became entitled to a salary of $2400 for the school year 1932-1933. The aforesaid resolution dated June 23, 1933 purports to reduce the compensation of said appellant by 11% for the period between July 1, 1933 and July 1, 1934, being the school year 1933-1934. Since the opening of the public schools of West New York for the school year 1933-1934 said appellant has received compensation for only two weeks and has been paid the sum of $106.80 as said compensation for said two weeks.

20. The appellants, Alice Halfpenny and Samuel Litzenberg, by the terms of their respective contracts of employment as teachers in the public schools of West New York became entitled to salaries of $2525 for the school year 1932-1933. The aforesaid resolution dated June 23, 1933 purports to reduce the compensation of said appellants by 12% for the period between July 1, 1933 and July 1, 1934, being the school year 1933-1934. Since the opening of the public schools of West New York for the school year 1933-1934 said appellants have received compensation for only two weeks and have each been paid the sum of $111.10 as said compensation for said two weeks.

21. The appellant, Mrs. Reintrout Jonsson, —the terms of her contract of employment as a teacher in the public [fol. 89] schools of West New York became entitled to a salary of $2750 for the school year 1932-1933. The aforesaid resolution dated June 23, 1933 purports to reduce the compensation of said appellant by 12% for the period between July 1, 1933 and July 1, 1934, being the school year

1933-1934. Since the opening of the public schools of West New York for the school year 1933-1934 said appellant has received compensation for only two weeks and has been paid the sum of $121.00 as said compensation for said two weeks.

22. The appellants, Harriet Jochem and Viola Neubert, by the terms of their respective contracts of employment as teachers in the public schools of West New York became entitled to salaries of $1400 for the school year 1932-1933. The aforesaid resolution dated June 23, 1933 purports to reduce the compensation of said appellants by 10% for the period between July 1, 1933 and July 1, 1934, being the school year 1933-1934. Since the opening of the public schools of West New York for the school year 1933-1934 said appellants have received compensation for only two weeks and have each been paid the sum of $63.00 as said compensation for said two weeks.

23. The appellants, Grace Kaiser and Maude Meyers, by the terms of their respective contracts of employment as teachers in the public schools of West New York became entitled to salaries of $2225 for the school year 1932-1933. The aforesaid resolution dated June 23, 1933 purports to reduce the compensation of said appellants by 11% for the period between July 1, 1933 and July 1, 1934, being the school year 1933-1934. Since the opening of the public schools of West New York for the school year 1933-1934 [fol. 90] said appellants have received compensation for only two weeks and have each been paid the sum of $99.01 as said compensation for said two weeks.

24. The appellant, Evelyn Klees, by the terms of her contract of employment as a teacher in the public schools of West New York became entitled to a salary of $2200 for the school year 1932-1933. The aforesaid resolution dated June 23, 1933 purports to reduce the compensation of said appellant by 11% for the period between July 1, 1933 and July 1, 1934, being the school year 1933-1934. Since the opening of the public schools of West New York for the school year 1933-1934 said appellant has received compensation for only two weeks and has been paid the sum of $97.90 as said compensation for said two weeks.

25. The appellants, Wilma Lindlof and Ruth Humphrey, by the terms of their respective contract of employment as

teachers in the public schools of West New York — entitled to salaries of $2000 for the school year 1932-1933. The aforesaid resolution dated June 23, 1933 purports to reduce the compensation of said appellants by 11% for the period between July 1, 1933 and July 1, 1934, being the school year 1933-1934. Since the opening of the public schools of West New York for the school year 1933-1934 said appellants have received compensation for only two weeks and have each been paid the sum of $89.00 as said compensation for said two weeks.

26. The appellant, Ruth Lindstrom, by the terms of her contract of employment as a teacher in the public schools of West New York became entitled to a salary of $1600 for the school year 1932-1933. The aforesaid resolution dated June 23, 1933 purports to reduce the compensation of said ap- [fol. 91] pellant by 10% for the period between July 1, 1933 and July 1, 1934, being the school year 1933-1934. Since the opening of the public schools of West New York for the school year 1933-1934 said appellant has received compensation for only two weeks and has been paid the sum of $72.00 as said compensation for said two weeks.

27. The appellant, Audrey Lundell, by the terms of her contract of employment as a teacher in the public schools of West New York became entitled to a salary of $2250 for the school year 1932-1933. The aforesaid resolution dated June 23, 1933 purports to reduce the compensation of said appellant by 11% for the period between July 1, 1933 and July 1, 1934, being the school year 1933-1934. Since the opening of the public schools of West New York for the school year 1933-1934 said appellant has received compensation for only two weeks and has been paid the sum of $100.12 as said compensation for said two weeks.

28. The appellant, Edna Moreau, by the terms of her contract of employment as a teacher in the public schools of West New York became entitled to a salary of $2775 for the school year 1932-1933. The aforesaid resolution dated June 23, 1933 purports to reduce the compensation of said appellant by 12% for the period between July 1, 1933 and July 1, 1934, being the school year 1933-1934. Since the opening of the public schools of West New York for the school year 1933-1934 said appellant has received compen-

sation for only two weeks and has been paid the sum of $122.10 as said compensation for said two weeks.

29. The appellant, Harriet MacEwan, by the terms of her [fol. 92] contract of employment as a teacher in the public schools of West New York became entitled to a salary of $2475 for the school year 1932-1933. The aforesaid resolution dated June 23, 1933 purports to reduce the compensation of said appellant by 11% for the period between July 1, 1933 and July 1, 1934, being the school year 1933-1934. Since the opening of the public schools of West New York for the school year 1933-1934 said appellant has received compensation for only two weeks and has been paid the sum of $110.13 as said compensation for said two weeks.

30. The appellant, Agnes D. McDermott, by the terms of her contract of employment as a teacher in the public schools of West New York became entitled to a salary of $2125 for the school year 1932-1933. The aforesaid resolution dated June 23, 1933 purports to reduce the compensation of said appellant by 11% for the period between July 1, 1933 and July 1, 1934, being the school year 1933-1934. Since the opening of the public schools of West New York for the school year 1933-1934 said appellant has received compensation for only two weeks and has been paid the sum of $94.56 as said compensation for said two weeks.

31. The appellant, Gertrude Reiley, by the terms of her contract of employment as a teacher in the public schools of West New York became entitled to a salary of $3025 for the school year 1932-1933. The aforesaid resolution dated June 23, 1933 purports to reduce the compensation of said appellant by 13% for the period between July 1, 1933 and July 1, 1934, being the school year 1933-1934. Since the opening of the public schools of West New York for the school year 1933-1934 said appellant has received compensa- [fol. 93] tion for only two weeks and has been paid the sum of $131.58 as said compensation for said two weeks.

32. The appellant, Alysse Reiley, by the terms of her contract of employment as a teacher in the public schools of West New York became entitled to a salary of $2375 for the school year 1932-1933. The aforesaid resolution dated June 23, 1933 purports to reduce the compensation of said appellant by 11% for the period between July 1,

1933 and July 1, 1934, being the school year 1933-1934. Since the opening of the public schools of West New York for the school year 1933-1934 said appellant has received compensation for only two weeks and has been paid the sum of $105.68 as said compensation for said two weeks.

33. The appellant, Peter Sottung, by the terms of his contract of employment as a teacher in the public schools of West New York became entitled to a salary of $3175 for the school year 1932-1933. The aforesaid resolution dated June 23, 1933 purports to reduce the compensation of said appellant by 13% for the period between July 1, 1933 and July 1, 1934, being the school year 1933-1934. Since the opening of the public schools of West New York for the school year 1933-1934 said appellant has received compensation for only two weeks and has been paid the sum of $138.11 as said compensation for said two weeks.

34. The appellants, Elizabeth Steinel and John McGrath, by the terms of their respective contracts of employment as teachers in the public schools of West New York became entitled to salaries of $2125 for the school year 1932-1933. The aforesaid resolution dated June 23, 1933 purports to reduce the compensation of said appellants by 11% for the [fol. 94] period between July 1, 1933 and July 1, 1934, being the school year 1933-1934. Since the opening of the public schools of West New York for the school year 1933-1934 said appellants have received compensation for only two weeks and have each been paid the sum of $94.56 as said compensation for said two weeks.

35. The appellants, Vaughn D. Stocking and Wilson W. Staver, by the terms of their respective contracts of employment as principals in the public schools of West New York became entitled to salaries of $4300 for the school year 1932-1933. The aforesaid resolution dated June 23, 1933 purports to reduce the compensation of said appellants by 15% for the period between July 1, 1933 and July 1, 1934, being the school year 1933-1934. Since the opening of the public schools of West New York for the school year 1933-1934 said appellants have received compensation for only two weeks and have each been paid the sum of $182.75 as said compensation for said two weeks.

36. The appellant, Marjorie Stein, by the terms of her contract of employment as a teacher in the public schools

of West New York became entitled to a salary of $2100 for the school year 1932-1933. The aforesaid resolution dated June 23, 1933 purports to reduce the compensation of said appellant by 11% for the school year 1933-1934. Since the opening of the public schools of West New York for the school year 1933-1934 said appellant has received compensation for only two weeks and has been paid the sum of $93.45 as said compensation for said two weeks.

37. The appellant, Carolyn Trott, by the terms of her contract of employment as a teacher in the public schools [fol. 95] of West New York became entitled to a salary of $1600 for the school year 1932-1933. The aforesaid resolution dated June 23, 1933 purports to reduce the compensation of said appellant by 10% for the period between July 1, 1933 and July 1, 1934, being the school year 1933-1934. Since the opening of the public schools of West New York for the school year 1933-1934 said appellant has received compensation for only two weeks and has been paid the sum of $72.00 as said compensation for said two weeks.

37. The appellant, Bernice Young, by the terms of her contract of employment as a teacher in the public schools of West New York became entitled to a salary of $1975 for the school year 1932-1933. The aforesaid resolution dated June 23, 1933 purports to reduce the compensation of said appellant by 10% for the period between July 1, 1933 and July 1, 1934, being the school year 1933-1934. Since the opening of the public schools of West New York for the school year 1933-1934 said appellant has received compensation for only two weeks and has been paid the sum of $88.87 as said compensation for said two weeks.

38. The appellant, Carlos A. Woodworth, by the terms of his contract of employment as a principal in the public schools of West New York became entitled to a salary of $5000 for the school year 1932-1933. The aforesaid resolution dated June 23, 1933 purports to reduce the compensation of said appellant by 15% for the period between July 1, 1933 and July 1, 1934, being the school year 1933-1934. Since the opening of the public schools of West New York for the school year 1933-1934 said appellant [fol. 96] has received compensation for only two weeks and has been paid the sum of $212.50 as said compensation for said two weeks.

39. The appellant, John White, by the terms of his contract of employment as a teacher in the public schools of West New York became entitled to a salary of $1900 for the school year 1932-1933. The aforesaid resolution dated June 23, 1933 purports to reduce the compensation of said appellant by 10% for the period between July 1, 1933 and July 1, 1934, being the school year 1933-1934. Since the opening of the public schools of West New York for the school year 1933-1934 said appellant has received compensation for only two weeks and has been paid the sum of $85.50 as said compensation for said two weeks.

40. The appellant, Elvira Wiese, by the terms of her contract of employment as a teacher in the public schools of West New York became entitled to a salary of $1800 for the school year 1932-1933. The aforesaid resolution dated June 23, 1933 purports to reduce the compensation of said appellant by 10% for the period between July 1, 1933 and July 1, 1934, being the school year 1933-1934. Since the opening of the public schools of West New York for the school year 1933-1934 said appellant has received compensation for only two weeks and has been paid the sum of $81.00 as said compensation for said two weeks.

41. The appellant, Adelaide Whelan, by the terms of her contract of employment as a teacher in the public schools of West New York became entitled to a salary of $1450 for the school year $1932-1933. The aforesaid resolution dated June 23, 1933 purports to reduce the com-[fol. 97] pensation of said appellant by 10% for the period between July 1, 1933 and July 1, 1934, being the school year 1933-1934. Since the opening of the public schools of West New York for the school year 1933-1934 said appellant has received compensation for only two weeks and has been paid the sum of $65.25 as said compensation for said two weeks.

42. The appellant, Florence Eldred, by the terms of her contract of employment as a teacher in the public schools of West New York became entitled to a salary of $3050 for the school year 1932-1933. The aforesaid resolution dated June 23, 1933 purports to reduce the compensation of said appellant by 13% for the period between July 1, 1933 and July 1, 1934, being the school year 1933-1934.

Since the opening of the public schools of West New York for the school year 1933-1934 said appellant has received compensation for only two weeks and has been paid the sum of $132.67 as said compensation for said two weeks.

43. The appellant, Vincent McGuinness, by the terms of his contract of employment as a teacher in the public schools of West New York became entitled to a salary of $2975 for the school year 1932-1933. The aforesaid resolution dated June 23, 1933 purports to reduce the compensation of said appellant by 12% for the period between July 1, 1933 and July 1, 1934, being the school year 1933-1934. Since the opening of the public schools of West New York for the school year 1933-1934 said appellant has received compensation for only two weeks and has been paid the sum of $130.90 as said compensation for said two weeks.

[fol. 98] 44. The appellant, Robert Rollins, Jr., by the terms of his contract of employment as a teacher in the public schools of West New York became entitled to a salary of $2950 for the school year 1932-1933. The aforesaid resolution dated June 23, 1933 purports to reduce the compensation of said appellant by 12% for the period between July 1, 1933 and July 1, 1934, being the school year 1933-1934. Since the opening of the public schools of West New York for the school year 1933-1934 said appellant has received compensation for only two weeks and has been paid the sum of $129.80 as said compensation for said two weeks.

45. Appellants are informed and believe that said resolution dated June 23, 1933 was adopted by the Board of Education of the Town of West New York in reliance on "An Act respecting the salaries or compensation of officers and employees of and persons holding positions in the several school districts of this State," approved February 4, 1933. Appellants allege and show that said Act is unconstitutional and without force and effect insofar as it purports to authorize a reduction of the salary of each of the appellants without regard to the aforesaid right of each of said appellants during good behavior and efficiency to continue his or her employment without reduction of salary, and insofar as said Act purports to authorize a reduction of the salary of each of the appellants without regard to the contract of employment under which each

of the appellants has served and is serving as a teacher or principal in the public schools of West New York.

46. Appellants further allege and show that said resolution dated June 23, 1933 does not comply with the provisions of the aforesaid Act approved February 4, 1933 in [fol. 99] that said resolution discriminates among and between individuals in the same class of service in the public schools of West New York. Appellants further allege and show that the respondent Board of Education in applying said resolution has discriminated among and between individuals in the same class of service in the public schools of West New York.

47. Appellants further allege and show that said resolution dated June 23, 1933 is illegal and improper in that it purports to reduce the compensation of appellants for the period between July 1, 1933 and July 1, 1934 to a greater extent than the salaries or compensation of other employees of the Town of West New York have been reduced during the same period or portions thereof.

48. Since the passage of said resolution dated June 23, 1933 each of the appellants has accepted such compensation as has been paid for the school year 1933-1934 under protest and on account of the true salary of each of the appellants. None of the appellants has agreed expressly or impliedly to the terms of said resolution dated June 23, 1933 nor to the manner in which said resolution has been applied and carried out by the Board of Education of the Town of West New York.

Appellants therefore pray that an order may be made by the Commissioner of Education of the State of New Jersey setting aside and declaring invalid and void the action of the Board of Education of the Town of West New York in attempting to reduce the compensation of the appellants and each of them for the school year 1933-1934, which action of said Board of Education is embodied in [fol. 100] its resolution dated June 23, 1933. And appellants pray for such other relief as may be necessary and proper in the premises.

McCarter & English, Attorneys of Appellants.

Schedule "A" omitted. Printed side page 7, ante.

[fols. 101-102]. *Duly sworn to by Robert H. McCarter. Jurat omitted in printing.*

[fol. 103] STATE OF NEW JERSEY, DEPARTMENT OF PUBLIC INSTRUCTION

LUCY ASKAM et al.

vs.

BOARD OF EDUCATION OF THE TOWN OF WEST NEW YORK, Respondent

ANSWER—Filed January 15, 1934

The Board of Education of the Town of West New York for answer to the petition of appellants herein respectfully says:

[fol. 104] 1. It admits the allegations contained in paragraph 1 of the petition, except as to Appellant Mrs. Caroline Johansen, and as to her it denies that she is a teacher in the public schools of West New York.

2. It admits the allegations contained in paragraph 2, and in paragraphs 4 to 13, inclusive, and in paragraphs 15 to 44, inclusive, of the petition.

3. It denies the allegations contained in paragraphs 3, 46, 47, and 48, and asks proof of the allegations contained in paragraph 48.

4. It denies the inference contained in the beginning of paragraph 14 that the Appellant Caroline Johansen was employed as a teacher and that her salary was affected by the resolution cited. It admits the allegations contained in the last sentence of said paragraph and states that her salary was reduced from $2,300 to $1,600.

5. It admits the allegation contained in the first sentence of paragraph 45 of the petition, but denies the balance of the allegations contained in said paragraph.

6. For further answer respondent respectfully alleges and shows that the Appellant Mrs. Caroline Johansen never performed any duties as a teacher in the public schools of West New York, all of her work in such schools having been purely clerical in the office of a principal; that she accepted the maximum salary provided by respondent by resolution for office clerks holding certificates to teach; and that neither her position nor her salary ever was or now

is protected by the Act of October 19, 1903, its amendments or supplements, referred to in appellant's petition.

[fols. 105-106] 7. For further answer respondent respectfully alleges and shows that the Appellant Mrs. Viola Donovan performed no duties as a teacher prior to September, 1932; that before that time her duties had been purely clerical in the offices of school principals; and that, inasmuch as she had not been engaged as a teacher for three consecutive years prior to the reduction in salary complained of, she never was nor is now protected either in position or salary by the Act of October 19, 1903, its amendments or supplements, referred to in appellant's petition.

Respondent therefore prays that the petition be dismissed as to all the appellants.

The Board of Education of the Town of West New York in the County of Hudson, by Reinhold Hekeler, Its Attorney.

Duly sworn to by Leo V. Roth. Jurat omitted in printing.

[fols. 107-108] STATE OF NEW JERSEY, DEPARTMENT OF PUBLIC INSTRUCTION

LUCY ASKAM et als., Appellants,

vs.

BOARD OF EDUCATION OF THE TOWN OF WEST NEW YORK, Respondent

STIPULATION OF FACTS—Filed June 14, 1934

It is hereby stipulated by and between the respective parties to the above entitled cause that said cause be submitted for determination upon such facts contained in the petition of appeal as are admitted by the answer of the respondent to said petition and upon the additional facts stated in the following paragraphs:

1. Reference is hereby made to paragraph one of the Stipulation of Facts dated May 9, 1934 in the case of Jay B. Phelps, appellant, against Board of Education of the Town of West New York, respondent; and it is hereby

stipulated and agreed that paragraph one of said Stipulation is to be considered as paragraph one of this Stipulation as though repeated at length herein.

2. It is agreed that all of the appellants except Caroline Johansen are teachers or principals in the public schools of the Town of West New York and that each of the appellants has served a period of employment of more than three [fol. 109] consecutive years in the public school system of the Town of West New York and is now employed in the public school system of that town.

3. None of the appellants has been guilty of inefficiency, incapacity, conduct unbecoming a teacher or any other offence constituting just cause for dismissal or reduction of salary, and no written charges have been preferred against any of the appellants for inefficiency, incapacity, conduct unbecoming a teacher or other offence constituting just cause for dismissal or reduction of salary.

4. By a resolution dated June 23, 1933 the Board of Education of the Town of West New York purported to reduce the salaries of the superintendent of schools and of all principals, supervisors and teachers in the West New York school system for the period between July 1, 1933 and July 1, 1934. Said resolution reads as follows:

"Resolved, that between July 1, 1933 and July 1, 1934, the salaries of the superintendent of schools and of all principals, supervisors and teachers in the West New York School system be and they are hereby reduced as follows:

All salaries from $1200 to $1999 per annum reduced ten per cent;

All salaries from $2000 to $2499 per annum reduced eleven per cent;

All salaries from $2500 to $2999 per annum reduced twelve per cent;

All salaries from $3000 to $3499 per annum reduced thirteen per cent;

All salaries from $3500 to $3999 per annum reduced fourteen per cent;

All salaries from $4000 to $5600 per annum reduced fifteen per cent;

[fol. 110] all figures being inclusive; provided, however, that the salary of any elementary school teacher shall not

be reduced below the minimum of $1200 per annum, and the salary of any high school teacher shall not be reduced below the minimum of $1600 per annum."

5. The following appellants, by the terms of their respective contracts of employment as teachers in the public schools of West New York, became entitled to the following salaries for the school year 1932-1933 and the aforesaid resolution dated June 23, 1933 purports to reduce the compensation of said appellants by the following percentages during the period between July 1, 1933 and July 1, 1934, being the school year 1933-1934:

Name of Appellant.	1932-1933 salary.	Percentage of reduction.
Lucy Askam	$3200	13%
Helen F. Clohosy	"	"
Abe Golden	"	"
Mary Robinson	"	"
Thomas Roop	"	"
Gilbert Wagner	"	"
Elizabeth V. Borneman	3900	14
Alice Brewton	2450	11
Inez A. Becker	2500	12
Edith Brown	"	"
Mary I. Clark	"	"
Ethel Creamer	"	"
Ida B. Forbes	"	"
Lillian Hunt	"	"
Minnie C. Holthusen	"	"
Carrie Hauschild	"	"
Margaret Morris	"	"
Carrie Morris	"	"
Maud Rafter	"	"
Alida Russell	"	"
[fol. 111] Ida M. Smith	"	"
Alice Swinston	"	"
Johnetta Thorne	"	"
Jennie Thorp	"	"
Jessie Welch	"	"
Loretta V. White	"	"
Nell L. Winter	"	"
Jennie P. Buonaccorsi	2075	11
Walter Eickmann	"	"
Olga Grossman	"	"
Josephine Logioio	"	"

Name of Appellant.	1932-1933 salary.	Percentage of reduction.
Genevieve Creighton	2825	12
Elvira Chiricosta	3100	13
Edward Carroll	3400	13
George DeLamater	"	"
Bertha Godfrey	"	"
Emma Hubert	"	"
Esther E. Hanna	"	"
Herman F. Krause	"	"
Alice Luckings	"	"
Gustave Pohl	"	"
Mary Ross	"	"
Willis S. Eshleman	"	"
Edna Stone	"	"
Margaret Chaplin	2150	11
Dorothy L. Michaels	"	"
Mary E. Chase	2300	11
Geneva Dobbs	"	"
Mae H. Girsham	"	"
Frances C. Hangley	"	"
Rose Jacobs	"	"
Mary Nolan	"	"
Saidie Nicoll	"	"
Lillian Rank	"	"
Ellen Smith	"	"
Mrs. Viola Donovan	2875	12
[fol. 112] John Edgar Dransfield	4000	15
Elsie H. Eckardt	2025	11
Esther J. Ekegren	1950	10
Gertrude Reineman	"	"
Clara Greene	2400	11
Alice Halfpenny	2525	12
Samuel Litzenberg	"	"
Mrs. Reintraut Jonsson	2750	12
Harriet Jocham	1400	10
Viola Neubert	"	"
Grace Kaiser	2225	11
Maude Meyers	"	"
Evelyn Klees	2200	11
Wilma Lindlof	2000	11
Ruth Humphrey	"	"
Ruth Lindstrom	1600	10

Name of Appellant.	1932-1933 salary.	Percentage of reduction.
Audrey Lundell	2250	11
Edna Moreau	2775	12
Harriet MacEwan	2475	11
Agnes D. McDermott	2125	11
Gertrude Reiley	3025	13
Alysse Reiley	2375	11
Peter Sottung	3175	13
Elizabeth Steinel	2125	11
John McGrath	"	"
Vaughn D. Stocking	4300	15
Wilson W. Staver	"	"
Marjorie Stein	2100	11
Carolyn Trott	1600	10
Bernice Young	1975	10
Carlos A. Woodworth	5000	15
John White	1900	10
Elvira Wiese	1800	10
Adelaide Whelan	1450	10
Florence Eldred	3050	13
Vincent McGuinness	2975	12
Robert Rollins, Jr.	2950	12

[fol. 113] 6. It is alleged in paragraph one of the Petition of Appeal that the appellants are all teachers or principals in the public schools of the Town of West New York. It is admitted in the answer to the Petition of Appeal that this is true except as to the appellant, Caroline Johansen, and as to her, it is denied that she is a teacher in the public schools of West New York. At the present time Caroline Johansen is employed in the capacity commonly described as that of teacher-clerk. She is the holder of a permanent elementary certificate issued to her by the State of New Jersey in January, 1919, and was appointed as a teacher in the public schools of West New York in November, 1918. She taught regularly as a grade teacher in those schools from November 1, 1918, to January, 1920. She was then granted six months' leave of absence because of illness. She was assigned to the office of School #3 as a clerk on September 1, 1920, and has ever since continued to act at that school in that capacity generally described as teacher-clerk. A brief outline of her duties follows: the usual cleri-

cal work in the office of the principal of public school #3; checking attendance records and assisting the principal generally in the administrative work. She does no teaching. Her initial salary of $700 per year was gradually increased to $1435 for the school year 1921-1922. During each of the next five school years she received a salary increase of $100 in accordance with the salary schedule fixed by the Board of Education of the Town of West New York. During the school year 1927-1928 and 1928-1929 she was given extra salary increases because of college courses successfully pursued. For the school year 1929-1930 her salary was fixed at the maximum of $2300 under a resolution of [fol. 114] the Board of Education of the Town of West New York reading as follows:

"Resolved that the action of this Board at its meeting of May 10, 1927, in fixing the maximum salary of office clerks holding certificates to teach at the sum of $2,150 per annum be and the same hereby is rescinded and that such maximum salary be and the same hereby is fixed at the sum of $2,300 per annum."

The salary of Caroline Johansen remained at $2,300 per year until the Board of Education undertook to reduce it to $1,600 for the school year 1933-1934, by a resolution dated June 23, 1933, and reading as follows:

"Resolved, that between July 1, 1933, and July 1, 1934, the salaries of clerks in the West New York School system be and they are hereby reduced to the amounts set opposite their respective names below:

Pearl Rutan	$2200	per annum.
Rose Millimet	1600	" "
Caroline Johansen	1600	" "
Madelyn Offerman	1200	" "
Angela Wintrich	1200	" "
Marie Martin	1200	" "
Sylvia Wilson	1200	" "
Cathleen Bach	1200	" "
Virginia Otis	1000	" "
Helen Roth	900	" "
Marion Holm	900	" "

As a result of the employment of Caroline Johansen in the public schools of the Town of West New York, the Board of Education of the Town of West New York has regularly

been allowed and has regularly accepted $200 per year from [fol. 115] the State School Tax moneys. The use of the expression "teacher-clerk," in referring to Caroline Johansen, is not meant to indicate that she is engaged in active teaching but is used merely as the general description of her position as an employe of the West New York school system who holds a teacher's certificate and who is engaged in performing the duties described in this paragraph.

7. As to the appellant Viola Donovan, it is alleged in the answer to the Petition of Appeal that she performed no duties as a teacher prior to September 1932. The petition of appeal alleges that she is a teacher and has served a period of employment of more than three consecutive years in the public schools of the Town of West New York and that by virtue of "An Act to establish a thorough and efficient system of free public schools and to provide for the maintenance, support and management thereof" approved October 19, 1903, and the several amendments thereof and supplements thereto, she is entitled to retain her employment during good behavior and efficiency without reduction of salary or compensation. The answer to the petition of appeal denies that she is protected by the provisions of that act. The particulars of her employment in the schools of the Town of West New York are as follows: She is the holder of a permanent stenography, typing and bookkeeping certificate; she was first employed in the schools of West New York in May, 1927 and was assigned to the office of the high school as a clerk beginning in September, 1927; between September, 1927 and September, 1932 she acted in the capacity generally described as teacher-clerk; in September, 1932, she was assigned to active teaching which she has been [fol. 116] doing ever since. A brief outline of the duties of Viola Donovan prior to September, 1932 is as follows: the usual clerical work in the office of the principal of the high school; meeting parents and solving the problems not requiring the attention of the principal; consulting with nurses on charitable cases and assisting the principal generally in his administrative duties. Prior to 1928 Viola Donovan did some incidental teaching but between 1928 and September, 1932 she did no teaching.

8. In the resolution dated June 23, 1933, which is set forth in paragraph 6 above, there appears the name Rose Milli-

met. She is not one of the appellants in this cause but she is the holder of a teacher's certificate and the fact concerning her employment in the public schools of West New York is as follows: she is the holder of a permanent elementary certificate issued to her by the State of New Jersey in 1915; she was appointed as a teacher in the public schools of West New York on July 26, 1915; she taught regularly as a grade teacher in those schools from 1915 until the end of the school year 1918-1919; she acted as a teacher-clerk during the school year 1919-1920; she taught as a grade teacher during the school year 1920-1921; she has acted in the capacity generally described as teacher-clerk from September, 1921, up to the present time. A brief outline of her duties follows: the usual clerical work in the office of the Vice-principal of the high school; checking attendance records; assisting students in arranging schedules; consulting with nurses on charitable cases; and assisting the Vice-principal generally in the administrative work of the Vice-principal. She does no teaching. Her initial salary of $560 per year was gradually increased to $1,840 for the school year [fol. 117] 1923-1924. During each of the next four school years she received a salary increase of $100 in accordance with the salary schedule fixed by the Board of Education of the Town of West New York. During the same period the persons actually teaching in the grade schools were likewise granted salary increases of $100 per year. During the school year 1928-1929 Rose Millimet's salary was increased to the maximum of $2,300 under a resolution of the Board of Education of the Town of West New York reading as follows:

"Resolved that the action of this Board at its meeting of May 10, 1927, in fixing the maximum salary of office clerks holding certificates to teach at the sum of $2,150 per annum be and the same hereby is rescinded and that such maximum salary be and the same hereby is fixed at the sum of $2,300 per annum."

The salary of Rose Millimet remained at $2,300 per annum until the Board of Education undertook to reduce it to $1,600 for the school year 1933-1934 by the resolution of June 23, 1933 which is set forth in paragraph 6 of this stipulation. As a result of the employment of Rose Millimet in the public schools of the Town of West New York, the Board of Educa-

tion of the Town of West New York has regularly been allowed and has regularly accepted $200 per year from the State School Tax moneys. The use of the expression "teacher-clerk," in referring to Rose Millimet, is not meant to indicate that she is engaged in active teaching but is used merely as the general description of her position as an employe of the West New York school system who holds a teacher's certificate and who is engaged in performing [fol. 118] the duties described in this paragraph.

9. Caroline Johansen is assigned to the office of the principal of Public School #3. Rose Milliment is assigned to the office of Vice-principal of the High School. Prior to September, 1932, Viola Donovan was assigned to the office of the principal of the High School. The employees of the Board of Education of the Town of West New York, who are assigned as clerks to the offices of the other principals, and the employee who is now assigned as clerk to the office of the principal of the High School, are not the holders of teachers' certificates although they do work of the same general nature as that done by Rose Millimet and Caroline Johansen and of the same general nature as that formerly done by Viola Donovan, and they do such work in a satisfactory manner.

10. Since the passage of the aforesaid resolutions dated June 23, 1933, none of the appellants has agreed expressly to the terms of said resolutions nor to the manner in which said resolutions have been applied and carried out by the Board of Education of the Town of West New York. However, all of the appellants, except Caroline Johansen, accepted and cashed salary checks when tendered by the Board of Education. These salary checks were based on the aforesaid reduced salary schedule. Caroline Johansen accepted such salary checks but did not cash them until after it had been stipulated by the attorneys for all parties to this action that she may cash such checks without affecting whatever rights she might have established by her not cashing such checks immediately or at least soon after their receipt by her. In case it is deemed [fols. 119-120] material to show the exact nature of such protests as were made by the appellants against the terms and application of said resolutions, it is stipulated and agreed that proof concerning such protests may be furnished by further stipulation or by the taking of testimony.

The foregoing stipulation is entered into as a substitute for the taking of testimony and the cause is to be submitted for determination as though the foregoing facts had been proved by qualified witnesses, each party reserving full rights to argue all questions of law which may be presented by the foregoing facts and by the petition of appeal and the answer thereto. And it is further stipulated that in case the Commissioner of Education desires further proof on any issue raised by the petition of appeal and the answer thereto, that such proof may be furnished by further stipulation or by the taking of testimony.

Dated June 13th, 1934.

McCarter & English, Attorneys of Petitioners. Reinhold Hekeler, Attorney of Respondent.

[fol. 121] STATE OF NEW JERSEY, DEPARTMENT OF PUBLIC INSTRUCTION

LUCY ASKAM et als., Appellants,

vs.

BOARD OF EDUCATION OF THE TOWN OF WEST NEW YORK, Respondent

DECISION OF COMMISSIONER OF EDUCATION

The respondent board of education on June 23, 1933, adopted resolutions as follows:

"Resolved, that between July 1, 1933, and July 1, 1934, the salaries of the superintendent of schools and of all principals, supervisors and teachers in the West New York School system be and they are hereby reduced as follows:

All salaries from $1200 to $1999 per annum reduced ten per cent;

All salaries from $2000 to $2499 per annum reduced eleven per cent;

All salaries from $2500 to $2999 per annum reduced twelve per cent;

All salaries from $3000 to $3499 per annum reduced thirteen per cent;

All salaries from $3500 to $3999 per annum reduced fourteen per cent;

All salaries from $4000 to $5600 per annum reduced fifteen per cent;

all figures being inclusive; provided, however, that the salary of any elementary school teacher shall not be reduced below the minimum of $1200 per annum, and the [fol. 122] salary of any high school teacher shall not be reduced below the minimum of $1600 per annum."

"Resolved, that between July 1, 1933, and July 1, 1934, the salaries of clerks in the West New York School system be and they are hereby reduced to the amounts set opposite their respective names below:

*Pearl Rutan	$2200	per	annum.
Rose Millimet	1600	"	"
Caroline Johansen	1600	"	"
Madelyn Offerman	1200	"	"
Angela Wintrich	1200	"	"
Marie Martin	1200	"	"
Sylvia Wilson	1200	"	"
Cathleen Bach	1200	"	"
Virginia Otis	1000	"	"
Helen Roth	900	"	"
Marion Holm	900	"	"

* Clerk assigned to superintendent and board jointly.

The salaries of teachers protected by the Tenure of Office Act were reduced by the percentage set forth in the first resolution. The clerks, whose salaries were fixed by the second resolution at $1600, were reduced from $2300; those at $1200 from $1500; and the one at $1000 from $1100. The two at $900 were new employees. The percentage reductions in the three decreased salary groups were approximately 30%, 20%, and 9%, respectively. The reduced salaries were accepted by appellants without formal complaint until the filing of the petition on December 16, 1933. The original stipulation of facts did not come to the Commissioner until May 9, 1934, and this was supplemented by others on June 4th and 13th.

[fol. 123] Counsel for appellants holds that the action of the board is illegal under the following contentions:

(1) Chapter 12, P. L. 1933 is unconstitutional as it interferes with the contractual rights of appellants.

(2) Even if the act were constitutional, the resolutions of June 23, 1933, are discriminatory and, therefore, in violation of the act.

The State Board of Education in the case of Albertson vs. Glassboro, decided December 1, 1924, held:

"Neither * * * the Commissioner nor this Board is empowered to declare any act passed by the Legislature to be contrary to the constitution * * *."

Since, in accordance with that decision, it is not the prerogative of the Commissioner to pass upon the constitutionality of the statute, there remains only to be decided whether the respondent could legally reduce salaries in any class of service on a graduated percentage basis, and whether it had a right to reduce the salaries of teacher-clerks in a greater amount than those of teachers.

Chapter 12, P. L. 1933, provides in relation to the authority of boards of education to reduce salaries of employees or persons holding positions in any school district:

"That in fixing salaries or compensation there shall be no discrimination among or between individuals in the same class of service."

[fol. 124] This provision indicates a legislative purpose of avoiding arbitrary discrimination in any class or group of employees which would lead either to an attempt to dismiss certain individuals without resorting to the methods prescribed in the Tenure of Office Act, or to the creation of dissatisfaction among members of a group. It is the opinion of the Commissioner that the Legislature, while thus protecting individual employees, gave broad discretion as to salary reductions in relation to classes or groups. The board of education has a right to consider the living wage of employees in determining salary reductions and it is not discrimination, within the meaning of Chapter 12, P. L. 1933, to increase the reductions by 1% on each graduated amount in excess of the minimum of $1200 fixed by

the resolution. Salary reductions, therefore, may be made on a flat percentage basis applicable to all employees of a class or in proportion to the salary of such employees. The statute recognizes different classes of service. Although they are not specifically set forth, there appear to be three distinct groups of employees of a board; namely: professional (including teachers, principals, supervisors, etc.); non-professional (including clerks, secretaries, custodians, janitors, etc.); and employees whose work partakes of the two preceding groups (including teacher-clerks, teacher-librarians, etc.). While subdivisions may be made by a board of education the resolutions in this case have application to these three major groups only. The first resolution applies to the professional group, the second includes clerks belonging to the second group, and by inference through the stipulations, includes teacher-clerks belonging to the third group. In the first resolution the board estab- [fols. 125-126] lished a graduated percentage reduction of salaries and in the second made a proportionate reduction in the salaries of clerical employees, some of whom are termed "teacher-clerks" because they hold teachers' certificates. Clerks without teachers certificates have no tenure protection, and the Commissioner is unable to find any decisions defining the status of teacher-clerks in reference to the Tenure of Office Act. In the present instance, it does not appear to be necessary to decide whether teacher-clerks have tenure since, even if protected, the service rendered is different from that of regular teachers. A board of education is vested with discretion to evaluate the importance of clerical work in relation to the strictly professional work of classroom teachers, and to reduce the salaries of the former employees to a greater extent than those devoting practically their full time to teaching. The West New York Board of Education acted within its statutory authority when it adopted the above recited resolutions. The appeal is dismissed.

Dated July 18, 1934.

Charles H. Elliott, Commissioner of Education.

[fols. 127-128] STATE BOARD OF EDUCATION

LUCY ASKAM et als., Appellants,

vs.

BOARD OF EDUCATION OF THE TOWN OF WEST NEW YORK, Respondent

NOTICE OF APPEAL

To Reinhold Hekeler, Esq., Attorney of Respondent.

SIR:

Take notice, That the appellants in the above entitled cause appeals from the whole of the decision of the Commissioner of Education in said cause, which decision is dated July 18, 1934.

McCarter & English, Attorneys of Appellants.

Service of the within Notice of Appeal is hereby acknowledged this 14th day of August, 1934.

Reinhold Hekeler, Attorney of Respondent.

[fol. 129] STATE BOARD OF EDUCATION

LUCY ASKAM et als., Appellants,

vs.

BOARD OF EDUCATION OF THE TOWN OF WEST NEW YORK, Respondent

DECISION

The appellants, ninety-four in number, are all teachers, principals, supervisors, or clerks of the public schools of the Town of West New York. Each of the mis alleged to have been employed for more than three consecutive years and therefore to have tenure of office. On June 23, 1933, the Board of Education of West New York adopted resolutions whereby the salaries of principals, supervisors, teachers, and clerks in the system were reduced by certain specified percentages, or, as to the clerks, to certain specified amounts. The resolutions are set forth in full in the Commission's opinion.

The board's action was taken in pursuance of and reliance upon Chapter 12 of the Public Laws of 1933, which provided, in brief, that boards of education "shall have full authority, by resolution, to fix and determine the salaries and compensation to be paid to officers and employees of and persons holding positions in any such school district," notwithstanding they might "be under tenure or not."

Appellants do not deny that this statute, in terms, made lawful the reduction of salaries, notwithstanding the Tenure [fol. 130] of Office Act, but they maintain that the statute is unconstitutional, and this presents the first question to be determined on this appeal.

This board has heretofore taken the position that it is not empowered to declare an act of the Legislature to be unconstitutional. It was so held by this Board on December 1, 1924, in the case of Albertson vs. Glassboro, which is cited by the Commissioner in his opinion. Counsel for the appellants in their brief urge that our position in this respect was mistaken; that the Commissioner, in exercising his judicial functions in determining controversies arising under the School Laws, and this Board, in exercising the appellate jurisdiction conferred upon it by law with respect to such controversies, are tribunals which outrank other inferior courts of the State which, in their decisions, have declared acts of the Legislature to be contrary to the Constitution.

This question has therefore been carefully investigated and studied with the result that we believe that the position heretofore taken by the Board was possibly unduly modest and that the Board may have the right to declare the statute in question to be a violation of the Constitution of the State. But even if this Board has such power, this is not a case, in the opinion of the Law Committee, where it should be exercised.

It is true that in some courts and by some writers on the subject, it has been said that where a judge of an inferior court believes that a statute is without doubt contrary to the constitution, he should so hold, and act accordingly.

However, even the highest courts are always hesitant to declare legislative acts unconstitutional. The foremost textbook on this subject, possibly, contains, the following:

[fol. 131] "The fundamental law of the State is in question, as well as the correctness of legislative action; and

considerations of courtesy, as well as the importance of the question involved, should lead the court to decline to act at all''

except after the most careful and deliberate consideration, thus indicating the constraint with which even the highest courts of the land approach question of constitutionality.

It is true, as stated by the same authority, that ''this is a rule of propriety, not of constitutional obligation;'' but even Chief Justice Marshall himself declined to pass upon the constitutionality of an important act of Congress until a full bench of the Supreme Court was available. (See 1 Cooley's Constitutional Limitations, (8th Ed.) 335 et seq.; citing 8 Pet. 118).

One of the most eminent and scholarly judges who ever sat in the Surrogate's Courts of New York State, and whose opinions commanded the highest respect, once declared himself as follows:

''The transcendant power of declaring an act of the Legislature unconstitutional should never in my opinion be assumed by a court of first instance, except possibly in rare cases involving life or liberty, and where the invalidity of the legislative act is apparent on its face. The exercise of a judicial power to declare acts of the legislature void should, I think, be reserved to the graver courts of the State in solemn session in banc, or held for the final review of such great questions.''

In re Thornburgh, 72 Misc. Rep. 619.

[fols. 132-134] It has also been said that

''Undoubtedly when the highest courts in the land hesitate to declare a law unconstitutional, and allow much weight to the legislative judgment, the inferior courts should be still more reluctant to exercise this power, and a becoming modesty would at least be expected of those judicial officers who have not been trained to the investigation of legal and constitutional questions.''

(1 Cooley's Constitutional Limitations, (8th Ed.) p. 337, note.)

We are convinced that even should the high courts of the State instruct this Board that it has the power, in the exercise of its judicial functions, to pass on the consti-

tutionality of acts of the Legislature, that power should never be exercised unless the violation of the constitution is clear and beyond question. In our opinion, this is not such a case and we therefore believe that this Board should decline to pass on the constitutional question raised by the appellants.

One further question remains to be decided. The act of the Legislature in question (Chapter 12, P. L. 1933) provides "that in fixing salaries or compensation (pursuant to the act) there shall be no discrimination among or between individuals in the same class of service."

The appellants contend that the action of the board of education in this case violated the provision above quoted. The Commissioner, after careful discussion, holds that the board did not discriminate among individuals in the same class of service and that the statute was not violated in that respect. With this conclusion we agree.

It is therefore recommended that the opinion of the Commissioner be affirmed.

February 9, 1935.

[fol. 135] In Supreme Court of New Jersey

Lucy Askam et als., Prosecutors,

vs.

Board of Education of the Town of West New York, and State Board of Education

Reasons—Filed April 26, 1935

The prosecutors assign as reasons for reversing the Decision of The State Board of Education brought up by this Writ of Certiorari the following:

1. The action of the Board of Education of the Town of West New York in reducing prosecutors' salaries for the period between July 1, 1933, and July 1, 1934, was in violation of Chapter 243 of the Laws of 1909 (the Teachers' Tenure Act).

[fol. 136] 2. The action of the Board of Education of the Town of West New York in reducing prosecutors' salaries for the period between July 1, 1933, and July 1, 1934, was

in violation of the terms of prosecutors' contracts with said Board of Education.

3. The action of the Board of Education of the Town of West New York in reducing prosecutors' salaries for the period between July 1, 1933, and July 1, 1934, is illegal, in that Chapter 12 of the Laws of 1933 authorizing Boards of Education to reduce salaries of employees, whether under tenure or not, is unconstitutional in the following respects:

(a) It violates Article IV, sec. 7, par. 3 of the Constitution of New Jersey.

(b) It violates Article I, Sec. 10 of the Constitution of the United States by impairing the Obligation of Contracts.

(c) It violates Amendment XIV, Sec. 1 of the Constitution of the United States by depriving persons of property without due process of law and by denying to them the equal protection of the laws.

4. The action of the Board of Education of the Town of West New York in reducing prosecutors' salaries for the period between July 1, 1933, and July 1, 1934, is illegal, in that Chapter 12 of the Laws of 1933 authorizing Boards of Education to reduce salaries of employees applies by its preamble only to school districts in which emergency exists, and no emergency has been shown to exist or to have existed in the Town of West New York.

[fol. 137] 5. The action of the Board of Education of the Town of West New York in reducing prosecutors' salaries for the period between July 1, 1933, and July 1, 1934, is illegal, in that Chapter 12 of the Laws of 1933 authorizing Boards of Education to reduce salaries of employees applies by its preamble only to school districts in which emergency exists, and the said Board of Education of the Town of West New York did not inquire or determine whether an emergency existed in said school district before attempting to reduce salaries under the provisions of said Chapter.

6. The action of the Board of Education of the Town of West New York in reducing prosecutors' salaries for the period between July 1, 1933, and July 1, 1934, is illegal, in that it violates Chapter 12 of the Laws of 1933 by discrim-

inating among or between individuals in the same class of service.

McCarter & English, Attorneys for Prosecutors.

[File endorsement omitted.]

[fols. 138-146] Opinion of the Supreme Court—Filed July 26, 1935, omitted. Printed side page 43, ante.

[fols. 147-148] In Supreme Court of New Jersey

Lucy Askam et al., Prosecutor-,

vs.

State Board of Education et al., Defendants

Rule of Affirmance

The above matter having regularly come on for a hearing at the May Term, 1935, of this Court and it appearing to the court that the proceedings and orders of the Board of Education of the Town of West New York and of the State Board of Education, under review were regular and should be affirmed,

It is ordered this 10th day of October, 1935, that the writ of certiorari herein be dismissed with costs in favor of the defendants and against the prosecutor.

Entered October 10, 1935, on motion of

Reinhold Hekeler, Attorney for Defendants.

[fol. 149] In Supreme Court of New Jersey

Lucy Askam et al., Prosecutors,

vs.

State Board of Education et al., Defendants

Notice and Grounds of Appeal—Filed October 25, 1935

To Reinhold Hekeler, Esq., Attorney for Defendants.

Sir:

Please take notice that the Prosecutors appeal to the Court of Errors and Appeals of the State of New Jersey from the whole of the judgment entered in the above cause in the Supreme Court of New Jersey, on the following ground: that the New Jersey Supreme Court erred in dismissing the writ of certiorari in said cause and in giving judgment in favor of the defendants and against the prosecutors.

McCarter & English, Attorneys of Prosecutors-Appellants.

I hereby acknowledge service of the within Notice of Appeal and Grounds of Appeal, this 18th day of October, 1935.

Reinhold Hekeler, Attorney of Defendants.

[fol. 150] In Court of Errors and Appeals of New Jersey, February Term, 1936

No. 36 (With 35)

Lucy Askam et al., Appellants,

—

Board of Education of the Town of West New York, N. J., et al., Respondents

Appeal from Supreme Court

Opinion—Filed May 14, 1936

Per Curiam:

The judgment under review herein should be affirmed for the reasons expressed in the opinion delivered by Mr.

Justice Parker in the Supreme Court, reported in 115 N. J. Law 310.

[File endorsement omitted.]

[fol. 151] [Endorsed:] Filed Sep. 28, 1936. Fred L. Bloodgood, Clerk.

[fol. 152] In Court of Errors and Appeals of New Jersey

No. 36 (11783)

Lucy Askam et als., Appellants,

vs.

Board of Education of the Town of West New York et al., Respondents

On Appeal from Supreme Court

Rule of Affirmance—Filed May 21, 1936

The above cause having regularly come on for a hearing at the February Term, 1936, of this Court, and it appearing to this Court that the judgment entered in the above cause in the Supreme Court of New Jersey, under review, was proper in its entirety and should be affirmed,

It is Ordered this 14th day of May, 1936, that the said judgment appealed from be and the same is hereby in all things affirmed, with costs in favor of the respondents and against the appellants.

Entered June 4, 1936.

On motion of Reinhold Hekeler, Attorney for Respondents.

[File endorsement omitted.]

[fol. 153] [Endorsed:] Filed Jun. 4, 1936. Fred L. Bloodgood, Clerk.

[fol. 154] SUPREME COURT OF THE UNITED STATES

LUCY ASKAM et als., Appellants,

vs.

BOARD OF EDUCATION OF THE TOWN OF WEST NEW YORK and State Board of Education of the State of New Jersey, Appellees

PETITION FOR APPEAL—Filed September 28, 1936

Considering themselves aggrieved by the final decision of the Court of Errors and Appeals of the State of New Jersey in the above-entitled cause, the appellants therein, Lucy Askam, Elizabeth V. Borneman, Alice Brewton, Inez A. Becker, Jennie P. Buonaccorsi, Edith Brown, Helen F. Clohosy, Genevieve Creighton, Elvira Chiricosta, Edward Carroll, Margaret Chaplin, Mary E. Chase, Mary I. Clark, Ethel Creamer, Mrs. Viola Donovan, George DeLamater, Geneva Dobbs, John Edgar Dransfield, Walter Eickmann, Elsie H. Eckardt, Esther J. Ekegren, Ida B. Forbes, Bertha Godfrey, Abe Golden, Clara Greene, Mae H. Girsham, Olga Grossmann, Emma Hubert, Esther E. Hanna, Alice Halfpenny, Ruth Humphrey, Lillian Hunt, Frances C. Hangley, Minnie C. Holthusen, Carrie Hauschild, Mrs. Reintraut Jonsson, Harriet Jochem, Mrs. Caroline Johansen, Rose Jacobs, Herman F. Krause, Grace Kaiser, Evelyn Klees, Alice Luckings, Wilma Lindlof, Ruth Lindstrom, Samuel Litzenberg, Josephine Logioio, Audrey Lundell, Edna Moreau, Harriet MacEwan, Agnes D. McDermott, Maude Meyers, Dorothy L. Michaels, Margaret Norris, Carrie Morris, Mary Nolan, Saidie Nicoll, Gustave Pohl, Gertrude Reiley, Mary Robinson, Thomas Roop, Mary Ross, Maud Rafter, Lillian Rank, Alysse Reiley, Gertrude Reineman, Alida Russell, Peter Sottung, Elizabeth Steinel, Vaughn D. Stocking, Ida M. Smith, Marjorie Stein, Alice Swinston, Ellen Smith, Wilson W. Staver, Johnetta [fol. 155] Thorne, Jennie Thorp, Carolyn Trott, Bernice Young, Carlos A. Woodworth, Gilbert C. Wagner, John White, Elvira Wiese, Jessie Welch, Adelaide Whelan, Loretta V. White, Nell L. Winter, Florence Eldred, Willis S. Eshleman, John McGrath, Vincent McGuinness, Robert Rollins, Jr., Edna Stone and Viola Neubert, hereby pray that an appeal be allowed to the Supreme Court of the

United States herein and for an order fixing the amount of the bond thereon.

Assignment of Errors

Now comes the appellants above named and file herewith their petition for appeal and say that there are errors in the records and proceedings of the above entitled cause, and for the purpose of having the same reviewed in the Supreme Court of the United States, make the following assignment:

1. The New Jersey Court of Errors and Appeals erred in giving judgment affirming the judgment of the two Jersey Supreme Court, holding Chapter 12 of the New Jersey Laws of 1933 to be a constitutional act.

2. The New Jersey Court of Errors and Appeals erred in failing to render judgment in favor of said appellants.

3. The New Jersey Court of Errors and Appeals erred in failing to hold that said Chapter 12 of the New Jersey Laws of 1933, impaired the obligation of an existing contract between the appellants and the appellees in violation of Article 1, Section 10 of the Constitution of the United States.

4. The New Jersey Court of Errors and Appeals erred [fol. 156] in failing to hold that said Chapter 12 of the New Jersey Laws of 1933, deprived the appellants of their property without due process of law in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

5. The New Jersey Court of Errors and Appeals erred in failing to hold that said Chapter 12 of the New Jersey Laws of 1933, denied to the appellants the equal protection of the laws in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

6. The New Jersey Court of Errors and Appeals erred in holding that the action of the Board of Education of the Town of West New York in reducing appellants' salaries for the period between July 1st, 1933 and July 1st, 1934, taken under and by virtue of said Chapter 12 of the New Jersey Laws of 1933, was constitutional and not an

impairment of the obligation of contracts in violation of Article 1, Section 10 of the Constitution of the United States.

7. The New Jersey Court of Errors and Appeals erred in holding that the action of the Board of Education of the Town of West New York in reducing appellants' salaries for the period between July 1st, 1933 and July 1st, 1934, taken under and by virtue of said Chapter 12 of the New Jersey Laws of 1933, was constitutional and not a deprivation of property without due process of law in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

8. The New Jersey Court of Errors and Appeals erred in holding that the action of the Board of Education of the Town of West New York in reducing appellants' salaries [fol. 157] for the period between July 1st, 1933 and July 1st, 1934, taken under and by virtue of said Chapter 12 of the New Jersey Laws of 1933, was constitutional and not a denial of the equal protection of the laws in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

PRAYER FOR REVERSAL

For which errors the said appellants pray that the said judgment of the New Jersey Court of Errors and Appeals, which is dated May 21, 1936 in the above entitled cause, be reviewed by the Supreme Court of the United States, and reversed, and a judgment entered in favor of the said appellants and for costs.

McCarter & English, Attorneys for and of Counsel with Appellants, by Robert H. McCarter.

[fol. 158] The within Petition for Appeal is hereby denied because of lack of jurisdiction this 20th day of August, 1936.

Luther A. Campbell, Chancellor of the State of New Jersey and President Judge of the Court of Errors and Appeals in the Last Resort in All Causes.

[File endorsement omitted.]

[fol. 159] SUPREME COURT OF THE UNITED STATES

LUCY ASKAM et als., Appellants

vs.

BOARD OF EDUCATION OF THE TOWN OF WEST NEW YORK and State Board of Education of the State of New Jersey, Appellees

ORDER ALLOWING APPEAL—Filed September 28, 1936

The appellants in the above entitled cause, having prayed for the allowance of an appeal in said cause to the Supreme Court of the United States from the judgment entered in the New Jersey Court of Errors and Appeals in the Last Resort in all Causes on the 21st day of May, 1936, and having presented their petition for appeal, assignment of errors, prayer for reversal and statement, pursuant to the statutes and to the rules of the Supreme Court of the United States in such case made and provided;

It is Ordered that an appeal be and the same is hereby allowed to the Supreme Court of the United States from the New Jersey Court of Errors and Appeals in the Last Resort in all Causes, as provided by law, and it is further Ordered that the Clerk of the New Jersey Supreme Court, to which Court the record in said cause has been remitted, shall prepare and certify a transcript of the record, proceedings and judgment in said cause and transmit the same to the Supreme Court of the United States, so that he shall have the same in said Court within forty days of this date.

And it is further Ordered that security for costs on ap-
[fol. 160] peal be fixed in the sum of $100.00.

Dated this 21st day of August, 1936.

Owen J. Roberts, Associate Justice of the Supreme Court of the United States.

Entered September 28, 1936.

On motion of McCarter & English, Attorneys of Appellants.

[fols. 161-172] [File endorsement omitted.]

[fols. 173-174] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1936

No. 454.

ORDER ENLARGING TIME—Filed October 10, 1936

Application being made and good cause being shown, it is hereby Ordered on this 30th day of September, 1936, that the time of the appellant to docket the above entitled case and file the record thereof is hereby enlarged to and including October 10th, 1936.

Owen J. Roberts, Associate Justice of the United States Supreme Court.

[fol. 175] [File endorsement omitted]

[fols. 176-177] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1936

No. 455

ORDER ENLARGING TIME—Filed October 10, 1936

Application being made and good cause being shown, it is hereby Ordered on this 30th day of September, 1936, that the time of the appellants to docket the above entitled case and file the record thereof is hereby enlarged to and including October 10th, 1936.

Owen J. Roberts, Associate Justice of the United States Supreme Court.

[fol. 178] [File endorsement omitted]

[fol. 179] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1936

No. 454

STATEMENT OF POINTS TO BE RELIED UPON AND PARTS OF RECORD TO BE PRINTED—Filed October 14, 1936

Now comes the above-named appellant, pursuant to paragraph 9 of Rule 13 of the Rules of this Court, and states

that the points upon which he intends to rely in this Court in this case are as follows:

Point I. Chapter 12 of the New Jersey Laws of 1933 (P. L. 1933, page 24), approved February 4, 1933, is unconstitutional and void as repugnant to Article 1, Section 10, of the Constitution of the United States, in that it impairs the obligation of an existing contract of the appellant.

Point II. The aforesaid Statute of the State of New Jersey is unconstitutional and void as repugnant to Section 1 of the Fourteenth Amendment of the Constitution of the United States, in that it deprives the appellant of his property without due process of law.

Point III. The said Statute of the State of New Jersey is unconstitutional and repugnant to Section 1 of the Fourteenth Amendment of the Constitution of the United States, in that it denies the appellant the equal protection of the laws.

[fols. 180-181] Point IV. The New Jersey Court of Errors and Appeals erred in deciding in favor of the validity of the aforesaid Statute of the State of New Jersey.

And the appellant further states that only the following parts of the record, as filed in this Court, need be printed for the consideration of the case:

Petition of appeal filed with the New Jersey Department of Public Instruction and addressed to the Commissioner of Education, together with Schedule A thereto annexed;

Answer to the aforesaid petition of appeal;

Stipulation of facts filed with the Department of Public Instruction of the State of New Jersey and dated May 9, 1934;

Decision of the Commissioner of Education of the State of New Jersey;

Notice of appeal to New Jersey State Board of Education;

Decision of the New Jersey State Board of Education;

Writ of Certiorari issued out of New Jersey Supreme Court;

Reasons on Writ of Certiorari;

Opinion of the New Jersey Supreme Court (a single opinion having been filed for this case and the companion case of Lucy Askam, et als. vs. State Board of Education

and Board of Education of the Town of West New York);

Rule of affirmance on the opinion of the New Jersey Supreme Court, entered Oetober 10, 1935;

Notice of appeal to New Jersey Court of Errors and Appeals and ground of appeal;

Opinion of the New Jersey Court of Errors and Appeals;

Rule of affirmance entered on the opinion of the New Jersey Court of Errors and Appeals;

Petition for appeal to United States Supreme Court and assignment of errors;

Order allowing appeal.

Robert H. McCarter, Counsel for Appellant.

[fol. 182] [File endorsement omitted]

[fol. 183] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1936

No. 455

STATEMENT OF POINTS TO BE RELIED UPON AND PARTS OF RECORD TO BE PRINTED—Filed October 14, 1936

Now come the appellants in the above entitled cause, pursuant to paragraph 9 of Rule 13 of the Rules of this Court, and state that the points upon which they intend to rely in this Court are as follows:

Point I. Chapter 12 of the New Jersey Laws of 1933 (P. L. 1933, page 24), aproved February 4, 1933, is unconstitutional and void as repugnant to Article 1, Section 10, of the Constitution of the United States, in that it impairs the obligations of existing contracts of the appellants.

Point II. The aforesaid Statute of the State of New Jersey is unconstitutional and void as repugnant to Section 1 of the Fourteenth Amendment of the Constitution of the United States, in that it deprives the appellants of their property without due process of law.

Point III. The said Statute of the State of New Jersey is unconstitutional and repugnant to Section 1 of the Fourteenth Amendment of the Constitution of the United States

in that it denies the appellants the equal protection of the [fols. 184-185] laws.

Point IV. The New Jersey Court of Errors and Appeals erred in deciding in favor of the validity of the aforesaid Statute of the State of New Jersey.

And the appellants further state that only the following parts of the record, as filed in this Court, need be printed for the consideration of the case:

Petition of appeal filed with the New Jersey Department of Public Instruction and addressed to the Commissioner of Education, together with Schedule A thereto annexed;

Answer to the aforesaid petition of appeal;

Stipulation of facts filed with the Department of Public Instruction of the State of New Jersey and dated June 13, 1934;

Decision of the Commissioner of Education of the State of New Jersey;

Notice of appeal to New Jersey State Board of Education;

Decision of the New Jersey State Board of Education;

Writ of Certiorari issued out of New Jersey Supreme Court;

Reasons on Writ of Certiorari;

Opinion of the New Jersey Supreme Court (a single opinion having been filed for this case and the companion case of Jay B. Phelps vs. State Board of Education and Board of Education of the Town of West New York);

Rule of affirmance on the opinion of the New Jersey Supreme Court, entered October 10, 1935;

Notice of appeal to New Jersey Court of Errors and Appeals and ground of appeal;

Opinion of the New Jersey Court of Errors and Appeals;

Rule of affirmance entered on the opinion of the New Jersey Court of Errors and Appeals;

Petition for appeal to United States Supreme Court and assignment of errors;

Order allowing appeal.

Robert H. McCarter, Counsel for Appellants.

[fol. 186] [File endorsement omitted]

[fols. 187 188] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1936

No. 454, No. 455

STIPULATION AS TO PRINTING RECORD Filed October 20, 1936

It is hereby stipulated and agreed by and between counsel for the above named appellants and counsel for the above named appellees that the only parts of the records in these cases which need be printed are those named in the statements heretofore filed, and that the same may be printed under one cover.

Dated October 19th, 1936.

Robert H. McCarter, Counsel for Appellants. Saul Nemser, Counsel for Appellees.

[fol. 189] [File endorsement omitted]

Endorsed on cover: File No. 40,994. New Jersey Court of Errors and Appeals. Term No. 454. Jay B. Phelps, appellant, vs. Board of Education of the Town of West New York and State Board of Education of the State of New Jersey. Filed October 10, 1936. Term No. 454, O. T., 1936.

Endorsed on cover: File No. 40,995. New Jersey Court of Errors and Appeals. Term No. 455. Lucy Askam et al., appellants, vs. Board of Education of the Town of West New York and State Board of Education of the State of New Jersey. Filed October 10, 1936. Term Nos. 454, O. T., 1936, 455, O. T., 1936.